625.

SUPREME COURT OF THE UNITED STATES,

No. 32.

SMITH ET AL.

vs.

KERNOCHER.

These are the statutes referred to in the bill of exceptions, on the case of Doe on the demise of Kernocher vs. Smith and Ponce, carried by writ of error to the Supreme Court of the United States; and those statutes marked A, B, C, D, and signed by us, *is* part of the bill of exceptions.

This the 29th June, 1847.

J. A. CAMPBELL,
E. S. DARGAN.

A.

E. S. DARGAN.

An act to incorporate the Alabama Life Insurance and Trust Company.

Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That from the time that this act shall take effect, George S. Gaines, Henry Hitchcock, Abner S. Lipscomb, Wm. R. Hallett, Philip McLaskey, Henry Bright, C. C. Hazard, Joseph E. Sheffield, L. H. Huder, George Star, William H. Robertson, Adolphe Batre, James Sanford, Jack F. Ross, and J. L. Beers, and their associates and successors, be, and they are hereby, constituted and made a body politic and corporate, under the name of the Alabama Life Insurance and Trust Company, to be located at Mobile; and by that name shall have power to contract and be contracted with, and may sue and be sued, plead and be impleaded, answer and be answered unto, in all courts having competent jurisdiction, and may have and use a common seal, and the same break, alter, and renew at pleasure, and shall be vested with all powers and privileges necessary to the objects of this incorporation, as hereinafter defined and limited.

Sec. 2. And be it further enacted, That the said company shall have power: 1st. To make insurance on lives, and also against losses by fire, and to take marine risks. 2d. To grant and purchase annui-

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ties. 3d. To make any other contracts involving the interests or use of money, and the duration of life. 4th. To receive moneys in trust, and to accumulate the same at such rate of interest as may be obtained or agreed upon, or to allow such interest thereon as may be agreed on. 5th. To accept and execute all such trusts of every description as may be committed to them by any person or persons whatsoever, or may be transferred to them by any court of record whatever. 6th. To receive and hold lands under grants, with such general or special trusts or covenants, so far as the same may be taken in payment of their debts, or as securities for loans of their capital, or otherwise, or purchased upon sales made under any law of this State, so far as the same may be necessary to protect the rights of said company, and the same again to sell, convey, and dispose of.

Sec. 3. And be it further enacted, That in all cases where any court hath jurisdiction for the appointment of a trustee or guardian of any infant, lunatic, or other person, the annual income of whose estate shall exceed the sum of one hundred dollars, such court shall have power to appoint the said company trustee or guardian of the estate of such infant, lunatic, or other person: Provided, that nothing in this section shall be so construed as to give the said corporation control of the person of any infant, lunatic, insane, or other person; and provided, further, in all cases where the court shall appoint said corporation administrators of any estate, the consent of the widow or next kin to such deceased person shall first be obtained.

Sec. 4. And be it further enacted, That on any sum not less than one hundred dollars, which shall be collected or received by said company in its capacity as trustee, guardian, and receiver, an interest shall be allowed by said company of not less than at the rate of four per cent. annually; which interest shall continue until the moneys so received shall be duly expended or distributed.

Sec. 5. And be it further enacted, That when the annual income of an infant, lunatic, or other person, of whose estate the said company shall be trustee or guardian, shall exceed the sum allowed, or which may be sufficient for the education and support of such infant, or support of such lunatic or other person, such surplus income shall be accumulated by the said company for the benefit of such infant, lunatic, or other person, by adding interest on the whole annually as a new principal; and the interest to *to* be allowed and added on such accumulation shall in no case be less than five per cent.

Sec. 6. And be it further enacted, That no bond or other collateral security shall be required from the said company, when appointed trustee, guardian, or receiver; but all investments of money received by said company, in either of said characters, shall be at the sole risk of the said corporation; and for all losses of such moneys, the capital stock, property, and effects of the said corporation shall be absolutely liable.

Sec. 7. And be it further enacted, That the capital stock of said corporation shall be one million of dollars, which shall be divided into shares of one hundred dollars each; the whole of said capital stock shall

be invested in bonds or notes drawing interest not exceeding seven per cent. per annum, secured by unincumbered real estate within the State of Alabama, of at least double the value in each case of the sum so secured: Provided, that houses and other buildings upon town lots, mortgaged to said company, shall be insured against the risk of fire, and the policy of insurance transferred to said corporation.

Sec. 8. And be it further enacted, That all the corporate powers of said company shall be executed by a board of trustees, and such officers and agents as they shall appoint. The board of trustees shall consist of twenty persons, all of whom shall be stockholders, and citizens of the United States; and they may establish and keep up an agency or agencies, in their discretion, in each judicial circuit in this State. They shall annually elect a president from their own body, and shall have power to declare, by a law, what number of trustees, less than a majority of the whole, shall be a quorum for transacting business.

Sec. 9. And be it further enacted, That the said board of trustees shall be divided into classes, consisting of four each, and so arranged that the term of service of one of said classes shall expire at the end of two years, one at the end of four years, one at the end of six years, one at the end of eight years, and one at the end of ten years, and so on, to be divided by lot, so that four trustees shall be appointed every two years; but the circuit court of Mobile county shall have power to remove a trustee, on such notice to be heard as they shall deem reasonable, on the application of a person interested, for a misdemeanor in office.

Sec. 10. And be it further enacted, That every vacancy happening in the board of trustees, by death, resignation, or otherwise, shall be supplied by the choice of the remaining trustees; and, in all cases, votes of two-thirds of all the trustees, for the time being, shall be requisite to a choice. No person shall be eligible who shall not have been openly nominated at a meeting of the trustees, at least two months before the day on which the election is held, and a written notice be mailed to each of the trustees at their usual place of residence, and the name of every person so nominated shall be published, for eight successive weeks previous to the day of election, in one or more newspapers published in Mobile.

Sec. 11. And be it further enacted, That William R. Hallett, A. W. Gordon, Jonathan Emanuel, Henry Goldthwaite, Henry Hitchcock, and John B. Hogan, be, and they are hereby, appointed commissioners, whose duty it shall be, within six months after this act shall be in force, to cause books for receiving subscriptions to the capital stock of said company to be opened at Huntsville, Florence, Tuscaloosa, and Montgomery, for the sum of one hundred thousand dollars at each place, under the direction of three superintendents at each place, to be appointed by said commissioners; and they shall also open books of subscription at the same time at Mobile, for subscribing the balance of said stock. The books shall be opened at the hour of ten in the morning, and shall be kept [open] from time to time by adjournment until the whole stock shall be subscribed, not exceeding thirty days. Public notice

shall be given, for at least twenty days, in one or more newspapers printed at each of said places, at the time and places of opening said subscriptions; and the said superintendents at Huntsville, Florence, Tuscaloosa, and Montgomery, shall, at the expiration of thirty days after the opening of said books, or so soon as the amount to be received by them respectively shall have been subscribed, close said books, and forthwith forward the same and the amount paid in to the commissioners at Mobile, who shall be authorized to continue open said books, or to re-open the same, from time to time, until the whole capital stock shall have been subscribed.

Sec. 12. And be it further enacted, That so soon as three hundred thousand dollars of said stock shall be taken, the said committee shall notify the subscribers of said stock, by publication in one or more newspapers published in Mobile and Tuscaloosa, for sixty days, to meet at such time and place as in such notice they may direct, to elect twenty persons from among said subscribers to constitute the first board of trustees under this charter; and the said subscribers, or so many thereof as may have assembled at the time and place fixed for opening the polls of said election, shall appoint four disinterested and respectable freeholders, of the State of Alabama, judges of the said election, who shall proceed to discharge the duties hereby required of them, that is to say: they shall receive the votes of the said subscribers, either by person or proxy duly authenticated in writing, allowing to each subscriber one vote for each share by him held, and they shall carefully note each vote in duplicate books prepared for that purpose, and after having taken all the votes that may be offered within the time fixed by said notice, the said judges shall count the said votes, and certify the number of votes given to each person, and thereupon they shall forthwith hand over the said poll books to the said committee, the one for the said company, and the other to be transmitted by them to the comptroller of the State, and the twenty persons having the highest number of votes shall be the said trustees, and thereupon their power and authority as said trustees shall commence.

Sec. 13. And be it further enacted, That, so soon as the said trustees are elected, they shall organize and notify the governor of this State that they are ready to commence business; and, thereupon, the governor shall appoint some suitable person to examine and ascertain the amount of moneys paid in on the first instalment of the said capital stock, whose duty it shall be, at the expense of the said company, to make such examination, and to ascertain, by the oath of the president, that the said capital has been bona fide paid in by the said stockholders of the said company, in payment of the first instalment under the regulations of this charter, and for no other purpose whatever, and that it is intended to be and received as a part of said capital stock, and forthwith make due return thereof to the governor, who, on the return being made to him as aforesaid, that one-tenth of the amount subscribed of the capital stock of said company has been paid in, shall cause proclamation to be made of the same, under the great seal of the State, which

shall be published at the expense of the said company in one or more newspapers published at Mobile, Tuscaloosa, Montgomery, Florence, and Huntsville; and, on the first publication of such proclamation, it shall be lawful for said company to commence business, and not before.

Sec. 14. And be it further enacted, That each subscriber shall, at the time of subscription, pay the sum of ten dollars on each share by him subscribed; and, after the shares shall have been subscribed, each stockholder shall pay an instalment of twenty-five dollars on each share so held by him, at the expiration of six months, at such place or places as the trustees shall appoint, of which time and place or places at least eight weeks' public notice shall be given; and, at the expiration of eighteen months after the said stock shall have been subscribed, the whole amount shall be paid in manner aforesaid, of which the same notice shall be given; the shares of every stockholder omitting to make such payment shall be forfeited, together with all previous payments made thereon, and the books shall be again opened, as directed in the eleventh section, for subscription, and so from time to time till all shares are subscribed and paid for.

Sec. 15. And be it further enacted, That every trustee of this corporation shall be a stockholder to the amount of five thousand dollars at least, and the seat of every trustee ceasing to be a stockholder to that amount shall immediately be considered and held vacant.

Sec. 16. And be it further enacted, That no loan shall be made, directly or indirectly, to any trustee of a greater sum than twenty thousand dollars in the whole, and the same security shall be given therefor as is required from other persons; and, in addition, any trustee may secure his own part of the capital stock, not exceeding five thousand dollars, by bond or note, and a conveyance of real estate in trust to the said company, in the manner prescribed in the second and seventh sections of this act.

Sec. 17. And be it further enacted, That the certificates of stock and of moneys received in trust, issued by the said corporation, shall be assignable on the books of the corporation, to be kept at such place or places, and under such regulations, as the board of trustees shall establish.

Sec. 18. And be it further enacted, That the trustees shall have discretionary power of investing the premium and profits received by the company, and the moneys received by them in trust, in Government or public stock of the United States, or of any State, or in the stock of any incorporated city, or in such real or personal securities as they may deem proper, or loan the same to any county, city, incorporated town, or company, at a rate of interest not exceeding the present legal rate.

Sec. 19. And be it further enacted, That the board of trustees shall exhibit, annually, to the comptroller of the State, on such day as he shall appoint, a full statement of their affairs in such form, and verified in such manner, as he shall direct. The comptroller, should he deem it proper, may refer such statement to a commissioner, with directions to make a full and thorough investigation into the affairs and manage-

ment of the company, and to report his opinion in relation to the ability and integrity with which its affairs are conducted; the prudence and safety of its investments; the security afforded to those by whom its engagements are held, and the advantage derived by the public from its operations; the expense of every investigation so made shall be defrayed by the company.

Sec. 20. And be it further enacted, That a copy of every statement made as aforesaid, and of every report made by a commissioner thereon, shall be transmitted by the comptroller to the legislature at its next annual session thereafter; and the legislature shall have power at all times to appoint a committee from its own body, whose duty it shall be to examine the condition and state of said body politic and corporate, to inspect the books of proceedings of the board of trustees, to ascertain the amount of deposites therein, an exact list of balances due to and from said body politic and corporate, and all other affairs of the same, and make a report thereon at such time as they may be instructed and directed; and if the legislature shall be of the opinion that said company has violated any of the provisions of its charter, they shall have power to order a scire facias to be issued, for the purpose of determining whether the charter of the said company ought not to be vacated.

Sec. 21. And be it further enacted, That for all losses of money which the capital stock shall not be sufficient to satisfy, the trustees shall be responsible in the same manner and to the same extent that trustees are now by law responsible in law or equity.

Sec. 22. And be it further enacted, That as a full commutation for all taxes, impositions, or assessments on the capital stock of said company, or on any of its property or effects, the said company, during the continuance of its charter, shall pay annually, on the first Monday in December in each year, to the treasurer of the State, for the use of the people thereof, the sum of two thousand dollars; and in case the said company shall refuse or omit to make any such annual payment, the treasurer shall give immediate notice thereof to the comptroller of the State, whose duty it shall be without delay to adopt the necessary measures for compelling such payment, in the same manner as the payments of other debts due to the State may be enforced by law.

Sec. 23. And be it further enacted, That the said trustees shall, on the first Monday in January and July, annually, make and declare such dividends, resulting from the profits of the said company, as they may think proper; but they shall not impair, nor in any wise lessen, the capital stock, and cause the same to be paid on demand to the stockholders thereof at such place or places as by a bye-law they may appoint.

Sec. 24. And be it further enacted, That the said company shall not have power to purchase and hold, in their own right, any real estate, *estate*, except such as may be necessary for the transaction of its business, other than such as may be purchased by them for the purpose of securing the payment of debts due to them which may be charged thereon, nor shall the said company become such purchasers by bidding beyond the amount that is due to them for principal, interest, and costs; and it

shall be the duty of said company to resell any lands so purchased whenever they can obtain the principal and interest of the moneys advanced by the said company, or due to them thereon.

Sec. 25. And be it further enacted, That this act shall continue and be in force, unalterable by the General Assembly without the consent of the trustees of the said company, for and during the term of twenty years, and no longer: *Provided, nevertheless,* that the operation of this act shall not affect any contract made or entered into by the said company prior thereto, nor prevent the collection of any debts that may be owing to the said company, nor the sale or disposition of any property or estate, real or personal, which the said company may own or possess at the time of the expiration of this act, or which the said company may acquire subsequently, in the payment or collection of any debt or debts, in the corporate name of the said company: *Provided, however,* that the whole business and affairs of said company shall be finally closed and settled within ten years after the expiration of this act.

Sec. 26. And be it further enacted, That this act shall not be construed to confer on the said company any rights or power to make any contract, or to accept or exercise any trust whatever, which it would be lawful for any individual when not restrained by statute under the general rules of law, which are or shall be in force, to make, accept, or execute.

Sec. 27. And be it further enacted, That the passage of this act shall not restrain or prevent the General Assembly from passing, at any time hereafter, any act or acts for the purpose of establishing and incorporating any other life insurance and trust company or companies, to be located at any place in this State, with all or any of the rights, powers, privileges, or immunities, granted or conferred by act, or any of them, nor from passing any other act or acts to incorporate any other company or companies for any other purpose or object whatever.

J. W. McCLUNG,
Speaker of the House of Representatives.
SAM. B. MOORE,
President of the Senate.

Approved January 9, 1836. C. C. CLAY.

THE STATE OF ALABAMA,
Secretary of State's office:

I, William Garrett, secretary of State of the State of Alabama, certify, that the foregoing pages, numbered from one to thirteen, contain a true copy of the original act entitled "An act to incorporate the Alabama Life Insurance and Trust Company," approved January the 9th, 1836, deposited in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at Tuskaloosa, this 18th day of June, [SEAL.] A. D. 1847, and of the independence of the United States of America the 71st.

WM. GARRETT, *Secretary of State.*

An act to authorize the Alabama Life Insurance and Trust Company of Mobile to reduce and consolidate the capital stock of the same.

Sec. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the said corporation is hereby authorized to reduce the capital stock of the same to such sum, not less than two hundred thousand dollars, as may be agreed on by the board of trustees: Provided, That consent in writing of the owners or holders of a majority of the shares is first obtained.

Sec. 2. Be it further enacted, That the board of trustees is hereby authorized to permit any holder of shares of the capital stock of said corporation, who has not paid the full amount of the shares held by him, to consolidate the same, and receive a certificate for the number of shares paid or deemed in full after such consolidation.

Sec. 3. And be it further enacted, That as soon as the said corporation shall reduce their capital stock, it shall be the duty of the president and secretary of the same to notify the governor and comptroller, by certificate under the seal of the said company, of the amount by which the capital stock has been reduced, and the bonus liable to be paid by the said corporation shall be reduced in the same proportion as the capital stock: Provided, That if the same is not reduced and certified within one year from the passage of this act, this section shall have no effect.

JNO. D. PHELAN,
Speaker of the House of Representatives.
H. McVAY,
President of the Senate.

Approved February 5, 1840. A. P. BAGBY.

THE STATE OF ALABAMA, *Secretary of State's office:*

I, William Garrett, secretary of State of the State of Alabama, certify, that the foregoing is a true copy of the original act entitled "An act to authorize the Alabama Life Insurance and Trust Company of Mobile to reduce and consolidate the capital stock of the same," approved Feb'y 5th, 1840, deposited in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at Tuskaloosa, this 18th day of June, [SEAL.] A. D. 1847, and of the independence of the United States the 71st.

W. GARRETT, *Secretary of State.*

B.

E. S. DARGAN,
J. A. CAMPBELL,
Plaintiffs' Attorneys.

An act to alter and amend the charter of the Alabama Life Insurance and Trust Company.

Sec. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the sum of two hundred thousand dollars of the capital stock of the said company be and the same is hereby appropriated and set apart as a special

fund for the business of insurance, as authorized by the charter of said company, and that portion of the capital stock alone be liable and held to answer any contract of insurance hereafter made and entered into with the said company: Provided, always, That nothing herein contained shall in any manner affect any contract or liability of the said company: Provided, That in all their policies of insurance the said company shall insert that their capital is two hundred thousand dollars.

Sec. 2. Be it further enacted, That no forfeiture shall accrue to the said company by reason of any stockholder of the said company having omitted to pay the third instalment of sixty-five per cent. of the capital stock as provided by the charter; but, in all cases where the whole of the said stock has not been paid or secured in conformity with the charter, it shall and may be lawful for any stockholder to secure the sum of sixty-five dollars on each share held by him, or any less amount, by bond or note, bearing interest at the rate of seven per cent. per annum, secured by mortgage or deed of trust on unincumbered real estate, of at least double the value of the sum intended to be secured.

Sec. 3. Be it further enacted, That on all the stock which shall not be fully paid in or secured in the manner provided for by the charter of *of* said company, or under this act, shall be paid in by such instalments as the trustees of the said company may direct; but not more than ten dollars on each share shall be called for in any one year previous to the 1st day of January, 1842, without the concurrence of four-fifths of the trustees; and if any stockholder shall neglect to pay any of the instalments so called, at the times when the same shall be called in, the stock of such stockholder which shall be unpaid shall be forfeited, and shall be sold in such manner as the trustees may direct, and after paying the expenses of the sale, the proceeds shall be applied to the extinguishment of the sum remaining due for said stock, and the surplus, if any, returned to such delinquent stockholder.

J. W. McCLUNG,
Speaker of the House of Representatives.
JESSE BEENE,
President of the Senate.

Approved Dec. 23, 1837. A. P. BAGBY.

THE STATE OF ALABAMA, *Secretary of State's office:*

I, William Garrett, secretary of State of the State aforesaid, certify, that the foregoing is a true copy of the original act entitled "An act to amend the charter of the Alabama Life Insurance and Trust Company," approved Dec. 23, 1837, deposited in this office.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] great seal of the State, at Tuskaloosa, this 18th day of June, A. D. 1847, and of American independence the 71st.

W. GARRETT, *Secretary of State.*

C.

E. S. DARGAN,
J. A. CAMPBELL,
Plaintiffs' Attorneys.

An act further to amend the charter of the Alabama Life Insurance and Trust Company.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That hereafter the board of trustees of the Alabama Life Insurance and Trust Company shall consist of fifteen members instead of twenty; which fifteen trustees shall be divided into five classes, numbered from one to five, each class to consist of three members; they shall have all the powers appertaining to the said board as heretofore; and all trustees hereafter appointed, except when to fill vacancies temporarily, as hereinafter provided, shall be elected by the stockholders.

Sec. 2. And be it further enacted, That as soon as practicable, the present trustees of said company shall proceed to make a new classification among themselves, limiting the number to fifteen, and shall by lot determine to which class each trustee shall belong; after which classification, the trustees of each class shall hold their offices till the time of the expiration of the term of service of their respective classes; the term of service of the first class shall expire on the second Monday in December, eighteen hundred and forty-three; that of the second, on the second *on the second* Monday of December, eighteen hundred and forty-four; that of the third, on the second Monday of December, eighteen hundred and forty-five; that of the fourth, on the second Monday of December, eighteen hundred and forty-six; and that of the fifth, on the second Monday in December, eighteen hundred and forty-seven. The trustees for the first class shall be again elected, on the same day, in the year eighteen hundred and forty-eight, and so on in regular rotation; one class shall be elected annually.

Sec. 3. And be it further enacted, That all trustees to be hereafter appointed or elected shall be citizens of the State of Alabama, and residents of the county of Mobile; each trustee shall also be the owner, in his own right, of at least one thousand dollars of the capital stock of the said corporation; and when any trustee shall cease to have any of the said qualifications, his seat shall be declared to be vacated; and any trustee absenting himself from said county for more than six months at a time, without leave of the board, shall thereby vacate his seat. The said trustees shall annually elect one of their board president of the said company. Any president or trustee whose term of office shall expire by limitation, shall continue to hold his seat till his successor is appointed.

Sec. 4. And be it further enacted, That all vacancies in the office of trustee shall be filled by the board till the succeeding annual election, when such vacancy shall be permanently filled by the stockholders; and the vacancies thus filled permanently shall entitle the trustees elected to hold till the regular expiration of the time of the classes so filled. The board shall also fill all vacancies in the office of president; and the president shall have the same qualifications as are required of trustees, and shall vacate his office for the like causes.

Sec. 5. And be it further enacted, That on the second Monday in December, in the year eighteen hundred and forty-three, and on the

second Monday in December in each year thereafter, an election shall be held at the office of the company in Mobile, by a committee of three stockholders, to be appointed by the board, for three trustees, to fill such class whose term of service may expire, and also so many trustees as may be necessary to fill all vacancies in the other classes; at such election the stockholders may vote either in person or by proxy, and each share shall entitle the owner to one vote. The said committee, or a majority thereof, shall receive the votes in writing, and return the same, with their certificate of the votes given, and the person having the largest number of votes given shall be declared duly elected, provided they have the proper qualifications. And in every case of election by the stockholders, ten days' previous notice of the time and place of such election shall be given by advertisement in a newspaper; and in all cases of election for trustees by the board to fill vacancies, ten days' notice of the time and place of such intended election shall be given to the several trustees, in such manner as the board shall direct. Whenever, from any cause, the stated election shall not be held, or there be a failure to elect proper persons, an election shall be held in the same mode, and on like notice, as soon as practicable, to supply the omission.

Sec. 6. And be it further enacted, That the amount of bonus hereafter to be paid by said company to this State shall be reduced in the same proportion as the amount of the capital stock of the said corporation has been reduced.

Sec. 7. And be it further enacted, That all parts of the former acts, to which this is an amendment, as may conflict with the provisions of this act, are hereby repealed.

JNO. ERWIN,
Speaker of the House of Representatives.
NATH'L TERRY,
President of the Senate.

Approved 9th February, 1843.

BEN. FITZPATRICK.

THE STATE OF ALABAMA,
Secretary of State's office:

I, William Garrett, secretary of State of the State of Alabama, certify, that the foregoing is a true copy of the original act entitled "An act further to amend the charter of the Alabama Life Insurance and Trust Company," approved 9th February, 1843, deposited in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at Tuskaloosa, this 18th day of June,
[L. S.] A. D. 1847, and of the independence of the United States of America the 71st.

W. GARRETT,
Secretary of State.

D.

E. S. DARGAN,
J. A. CAMPBELL,
Plaintiffs' Attorneys.

An act to amend the charter of the Alabama Life Insurance Company of Mobile.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the board of trustees shall consist of fifteen members, elected by the stockholders, one of whom shall be annually chosen president; each trustee shall be a citizen of the State of Alabama, and own at least one thousand dollars of the capital stock of said company: Provided, That any trustee ceasing to be the owner of that amount of stock, his seat shall be held vacant, and the board shall forthwith proceed to fill the same by the election of another stockholder who may possess the necessary qualifications.

Sec. 2. And be it further enacted, That the board of trustees shall be divided into five classes, each class to consist of three persons, and so arranged that the term of service of the first class shall expire at the end of one year; that of the second at the end of two years; that of the third at the end of three; that of the fourth at the end of four; and that of the fifth at the end of five years; the said classes to be divided by lot, so that three trustees shall be annually elected by the stockholders of said company: Provided, That nothing in this section shall preclude the re-eligibility of the president, so long as the stockholders may choose to elect him a trustee.

Sec. 3. And be it further enacted, That all laws, or parts of laws, contravening the provisions of this act be, and the same are hereby, repealed.

DAVID MOORE,
Speaker of the House of Representatives.
NATH'L TERRY,
President of the Senate.

Approved Dec. 29th, 1841.

BEN. FITZPATRICK.

THE STATE OF ALABAMA,
Secretary of State's office:

I, William Garrett, secretary of State of the State aforesaid, certify, that the foregoing is a true copy of the original act entitled "An act to amend the charter of the Alabama Life Insurance Company of Mobile," approved December 29th, 1841, deposited in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at Tuskaloosa, this 18th day of June, [SEAL.] A. D. 1847, and of the independence of the United States of America the 71st.

W. GARRETT,
Secretary of State.

1848

631.

SUPREME COURT OF THE UNITED STATES.

No. 151.

CHARLES WILKES, PLAINTIFF IN ERROR,

vs

SAMUEL DINSMAN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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Circuit court of the District of Columbia,
for the county of Washington:

SAMUEL DINSMAN
vs.
CHARLES WILKES.

Be it remembered, that on the 30th day of April, eighteen hundred and forty-five, judgment by the said court was rendered against the said defendant in the above cause, as appears from the minutes of the proceedings of the said court.

Petition to the Hon. R. B. Taney.

Whereupon, the said defendant, by Joseph H. Bradley, esq., his attorney, filed in court here the following petition, which appears to have been addressed to the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, in the words and of the tenor following, to wit:

To the honorable Roger B. Taney, chief justice of the United States.

The petition of Charles Wilkes, an officer of the navy of the United States, most respectfully sheweth:

That while in the command of the squadron employed in the survey of the Southern ocean, &c., under the act of Congress of the eighteenth day of May, 1836, he had under his command certain marines, who had been duly enlisted into the naval service of the United States, and who, in addition to and after their said enlistment, entered into a certain contract to serve during the cruise of the said squadron; all which will more fully appear by the record herewith shewn to your honor.

That the terms of service of some of these men, under their original enlistment, expired while a part of the said squadron, viz., the ship Vincennes, under the immediate command of your petitioner, and the ship Peacock, under the command of Capt. Hudson, were lying in the port of Honolulu, in the island of Oahu, one of the Sandwich islands, while the said ships were both undergoing extensive repairs, and before the cruise had been nearly finished, or the objects thereof effected.

That the said marines, whose term of service had so as aforesaid expired, conferred together, both before and after, or at the time of such expiration of service being complete, and their contract, according to their understanding of it, executed, they would serve no longer, and would demand to be sent home; and, accordingly, a certain Samuel Dinsman, among others, refused to do duty thereafter, and placed his refusal substantially on the grounds herein stated.

Your petitioner deemed the further service of these men essential to the public interest, and there is abundant proof to show that he judged rightly, and therefore required them to do duty. Upon their refusal, he caused them to be imprisoned, in irons, in the fort of the island, un-

der the command of a native governor, and, on the sailing of the ships, had them brought on board, and after again pointing out to them his own and their duty, and reminding them of their specific contract in addition to their said enlistment, he again required them to return to their duty; they firmly refused, and, persisting in their refusal, were, by order of this petitioner, brought to the gangway and whipped, according to the usage and practice in the naval service.

They were then ordered to be set at large, in order that they might communicate with their comrades, and thus be persuaded of their obligation to serve during the cruise; they, however, again refused, and the same scene of remonstrance and punishment was twice repeated, when they finally yielded, and did serve the residue of the cruise, and, on their return to the United States, were paid accordingly.

That after their return to the United States, several of the said marines, and among others the said Samuel Dinsman, institute suits against your petitioner for injuries alleged to have been inflicted on them, in the detention, imprisonment, and corporal punishment hereinbefore set out.

That the case of the said Samuel Dinsman was tried in the circuit court of the District of Columbia, for the county of Washington, at the March term thereof, 1845, and he produces and files herewith a record of the proceedings therein.

On the trial of the said cause, the enlistment of the said Samuel Dinsman having been fully proved, and also his signature to the said special contract having been shown, the plaintiff maintained that such contract was void, inasmuch as it provided for the payment of bounties to the marines, and that said part of said contract had been rejected by the accounting officers of the Treasury; and the defendant thereof filed in evidence the letter between the 4th auditor of the Treasury and the persons of the squadron, copied in page of the record, and *he*, the defendant's, order, and his reports to the Secretary of the Navy, on that subject, together with the report of the commanding officer of the marines; all of which were official documents, regularly made and returned, and tended to rebut the charge of malice in this defendant, in the matters complained of; and further offered evidence to show that, if the said commanding officer of said marines is now living, he is out of the jurisdiction of the United States; and the plaintiff, by his counsel, permitted the said letter of the 4th auditor to be read, and after it had been read, objected to the reading of either of the other of said papers, and the court sustained the objection, and the defendant excepted.

And he maintains there is error in this ruling of the court.

On the further trial of the cause, the defendant offered the record of the proceedings of a court martial, duly convened by order of the President, to try this defendant for the identical matters complained of in this action, (among other things,) and the charges and specifications, together with the finding of the court upon these charges and specifications; first, as a bar to this action, and second, that he had been acquitted of cruelty and oppression, and thereby to meet the presumption of

malice; but the court refused to permit the same to be read; and this forms the ground of the second exception; and there is error in this.

The third exception sets out, substantially, the defence on which this petitioner relied; and, after recapitulating the facts, and as to the imprisonment in the fort on the island, puts it on the ground that it would have been "'*unsafe*," under the circumstances, to keep the marines, so imprisoned as aforesaid, on board the said ship; and as to the shipping, that it was lawful, under the circumstances stated.

The court refused to give the instructions, as to the imprisonment, and placed their refusal on the ground that the word "*unsafe*" was too vague, uncertain, and equivocal, and that the jury must be satisfied by the evidence that there was an urgent necessity of using the fort, in order to justify the imprisonment; and as to the whipping, that it was not a sufficient justification to find that the punishment was according to the rules and regulations of the navy.

This petitioner will maintain that there is error in this.

The fourth exception proceeds on the assumption that the plaintiff was an enlisted marine, whose term of service expired while on duty at sea and foreign station, and whose detention was, by the *commander of the expedition*, deemed essential to the public interest; who was, therefore, detained, and thereby subject to the rules and regulations of the navy.

The court refused this, on the ground that it was not for the commander to judge, but the burthen of proof was on him to show to the jury, that each detention was essential to the public interests.

This petitioner will maintain there is error in this also.

The fifth and sixth exceptions maintain a modification of the same principle. There is error in the ruling of the court in these also.

After these exceptions, the court, in the prayer of the plaintiff, instructed *in* jury in these several instructions, substantially as follows:

That if the defendant could have *securely kept* the prisoners, including the plaintiff, on board the said ship Vincennes or Peacock, with *safety to the said ships, their officers, and crews*, then the defendant had no right to imprison him in said fort.

That if the floggings were immoderate, excessive, unanswerable in degree, and disproportionate in the alleged offences, and that such punishment was severer in degree than the rules and regulations of the navy, or the laws and customs in such cases at sea, authorize, then the plaintiff was entitled to recover.

And third, that if the jury, from the evidence, should find that the detention of the plaintiff, after his term of service had expired, was not essential to the public interests, such detention was unlawful.

And for each and every of these several injuries the jury might assess damages.

There is error in these several instructions given by the court, both in substance and in the manner in which they were given.

Your petitioner further shews, that the jury impannelled in the case of said Samuel Dinsman found a verdict against your petitioner for the sum of $500; that he is greatly aggrieved thereby, and can have no

relief, save by an order which will enable him to prosecute a writ of error; and he prays your honor for such order; and he will aver, &c.

CHARLES WILKES.

District of Columbia, Washington county, to wit:

On this 16th day of July, 1845, before the subscriber, a justice of the peace in and for the county and district aforesaid, personally appears Capt. Charles Wilkes, and makes oath, on the holy evangely of Almighty God, that the facts and circumstances set forth and contained in the aforegoing petition, as of his own knowledge, are true; and those derived from the information of others he believes to be true.

Sworn to before W. THOMPSON, *J. P.*

District of Columbia, Washington county, to wit:

I, William Brent, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify, that William Thompson, esq., before whom the above affidavit was made, and who has thereto subscribed his name, was, at the time thereof, a justice of the peace in and for the county and District aforesaid, duly commissioned and qualified.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 17th day of July, 1845.

W. BRENT, *Clk.*

Order of chief justice, directing writ to issue.

Upon the back of the foregoing petition was the following endorsement, to wit:

The clerk of the circuit court of the District of Columbia for the county of Washington is hereby directed to issue a writ of error, as prayed for in the foregoing petition.

R. B. TANEY.

July 21st, 1845.

Whereupon, in virtue of the above order, the writ of error issued, as prayed, with a citation, directed to the said Charles Wilkes, having given bond, as required by law, the following transcript of the record of proceedings in the said cause is accordingly transmitted to the Supreme Court of the United States.

Writ of error.

United States of America, set:

The President of the United States to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, between Samuel Dansman, plaintiff, and Charles Wilkes, defendant, a manifest error has happened, to the great damage of the said Charles Wilkes,

as by his complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same there on the first Monday of December next in the said Supreme Court then and there had and held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the customs of the United States, should be done.

Witnesses the honorable Roger B. Taney, chief justice of said Supreme Court.

Signed this 17th June, 1845.

WM. BRENT, *Clerk*.

Citation.

District of Columbia, to wit:

The United States of America to Samuel Dinsmore, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia for the county of Washington, wherein Charles Wilkes is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said Charles Wilkes, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, this 21st day of July, 1845.

R. B. TANEY.

Service acknowledged.

HENRY MAY.

Copy of appeal bond.

Know all men by these presents, that we, Charles Wilkes, William Speiden, and Joseph Drayton, all of Washington county, in the District of Columbia, are held and firmly bound unto Samuel Dinsman in the full and just sum of fifteen hundred dollars, current money of the United States; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this seventeenth day of June, 1845.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said Samuel Dinsman was plaintiff, and the said Charles Wilkes was defendant, judgment was rendered against the said defendant; and he having obtained a writ of error, and filed a copy thereof in the clerk's

office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel Dinsman, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Charles Wilkes shall prosecute his writ with effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

CHARLES WILKES, [SEAL.]
WILLIAM SPEIDEN, [SEAL.]
J. DRAYTON. [SEAL.]

Signed, sealed, and delivered, in presence of—
THOS. A. BUDD,
FRED. D. STUART.

July 21st, 1845—Approved.

R. B. TANEY.

True copy, test:

W. BRENT, *Clerk*.

Style of court.

District of Columbia, ss:

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-fourth day of the same month, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the sixty-ninth.

Present: William Cranch, chief judge; the honorable Buckner Thruston and James S. Morsell, assistant judges; Alexander Hunter, esquire, marshal.

WILLIAM BRENT, *Clerk*.

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

SAMUEL DINSMAN
against
CHARLES WILKES.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and forty-two, the said Samuel Dinsman, by Henry May, esquire, his attorney, prosecuted and sued forth, out of the circuit court here, the United States writ of capias ad respondendum, directed to the said marshal of the District of Columbia, in the words and of the tenor following, to wit:

Capias ad respondendum.

District of Columbia, to wit:

The United States of America to the marshal of the District of Columbia, greeting:

We command you that you take Charles Wilkes, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid at the city of Washington on the fourth Monday of November instant, to answer unto Samuel Dinsman in a plea of trespass, vi et armis, &c.

Witness William Cranch, esquire, chief judge of our said court, at the city of Washington, the 22nd day of August, anno domini one thousand eight hundred and forty-two.

Issued the 24th day of November, 1842. (May.)

W. BRENT, *Clerk*.

And the said plaintiff, by his attorney aforesaid, on the day of prosecuting and suing forth of the aforegoing writ, declared against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

District of Columbia, Washington county, to wit:

Charles Wilkes was attached to answer Samuel Dinsman in a plea of trespass, vi et armis, &c. And thereupon the said Samuel, by Henry May, his attorney, complains, for that the said Charles, heretofore, to wit, on sixteenth day of November, in the year of our Lord one thousand eight hundred and forty, with force and arms, &c., made an assault upon the said Samuel, in and on board of a certain ship or vessel called the Vincennes, then on the high seas, to wit, at the county aforesaid, and then and there seized and laid hold of the said Samuel, and without the license or consent, and against the will of the said Samuel, put and placed him, the said Samuel, into irons, and then and there, without any reasonable or probable cause whatsoever, kept and continued him, the said Samuel, so in irons and imprisonment as aforesaid, for a long space of time, to wit, for the space of five hours then next following; and then and there forced and compelled him, the said Samuel, so in irons and imprisonment as aforesaid, to go from and out of the said ship, into and along divers public streets, to a certain fort or prison, situate and being in the town of Honolula, in the island of Oahu, in parts beyond seas, to wit, at the county aforesaid; and then and there, in said fort in irons as aforesaid, imprisoned the said Samuel, and kept and continued him, the said Samuel, in prison there in a close cell in said fort, so in irons as aforesaid, for a long space of time, to wit, for the space of fifteen days then next following, contrary to the laws of the United States, and against the will of the said Samuel; whereby the said Samuel suffered and underwent great pain, and was greatly exposed to disease and the attacks of vermin, and was deprived of his reasonable

and necessary food and drink, and became sick and disordered, and seriously injured in his bodily health and strength, and so continued for a long space of time, to wit, hitherto.

And also, for that the said Charles heretofore, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and forty, with force and arms, made another assault on the said Samuel, in and on board of a certain ship or vessel called the Vincennes, then on the high seas, to wit, at the county aforesaid, and then and there, with great force and violence, with a certain rope called a "*cat o' nine tails*," gave and struck the said Samuel a great many violent blows and strokes on and about the back, neck, arms, legs, and divers other parts of his body; and also then and there, without the license or consent, and against the will of the said Samuel, put and placed him the said Samuel into irons, and then and there, without any reasonable or probable cause whatsoever, placed the said Samuel so in irons and imprisonment as aforesaid, in a certain part of said ship called "*the brig;*" and then and there kept and continued him, the said Samuel, so in irons and imprisonment as aforesaid, and stinted of his reasonable and necessary food and drink for a long space of time, to wit, for the space of four days then next following, contrary to the laws of the United States, and against the will of the said Samuel; by means of which said several premises, he, the said Samuel, was greatly hurt, bruised, and wounded, and became sick, sore, lame, and disordered, and so continued for a long space of time, to wit, hitherto; during all which time he, the said Samuel, suffered and underwent great pain and injury to his bodily health and strength.

And also, for that he, the said Charles, on the seventh day of December, in the year of our Lord one thousand eight hundred and forty, with force and arms, made another assault upon the said Samuel, in and on board of a certain ship or vessel, called the Vincennes, then on the high seas, to wit, at the county aforesaid, and then and there, with great force and violence, with a certain rope called a "*cat-o' nine-tails*," gave and struck the said Samuel a great many violent blows and strokes on and about his back, neck, arms, legs, and divers other parts of his body; and also, then and there, and without license or consent, and against the will of the said Samuel, put and placed him, the said Samuel, into irons, and then and there, without any reasonable or probable cause whatsoever, placed the said Samuel so in irons, and imprisonment as aforesaid, in a certain part of the said ship called "*the brig*," and in certain other parts of said ship; and then and there, in irons and imprisonment as aforesaid, and stinted of his reasonable and necessary food and drink, kept and detained him, the said Samuel, for a long space of time, to wit, for the space of one day, contrary to the laws of the United States, and against the will of the said Samuel, whereby the said Samuel was greatly hurt, bruised, wounded, and disordered in his health, and so continued for a long space of time, to wit, hitherto.

And also, for that the said Charles heretofore, to wit, on the eighth day of December, in the year of our Lord one thousand eight hundred

and forty, and on divers other days and times between that day and the first day of June, in the year one thousand eight hundred and forty-two, with force and arms, in and on board of a certain ship or vessel called the Vincennes, and in and on board of a certain other vessel called the Porpoise, on the high seas, to wit, at the county aforesaid, made an assault on the said Samuel, and then and there imprisoned him, the said Samuel, and kept and detained him in prison there, without any reasonable or probable cause whatsoever, for a long space of time, to wit, from the said eighth day of December to the said first day of June, contrary to the laws of the United States, and against the will of the said Samuel; and the said Charles other wrongs to the said Samuel then and there did, and against the peace of the United States, and to the damage of the said Samuel of five thousand dollars ($5,000) current money; and therefore he brings suit, and so forth.

John Doe and Richard Wroe, pledges, &c.

H. MAY, *Att'y for pl'ff.*

A copy of which said declaration was made and sent, with the said writ, to the marshal of the district aforesaid, thereon endorsed, "to be served on the defendant with the writ."

Marshal's return and defendant's appearance.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, and the day of the return of the aforegoing writ, comes into the circuit court here the said plaintiff, by his attorney aforesaid, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit.

"Cepi," A. HUNTER, *Marshal.*

And the said defendant, being called, appears in court here, by Joseph H. Bradley, esq., his attorney, and thereupon, on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here that the said defendant give special bail in the plea aforesaid, as in default thereof be committed to the custody of the marshal of the district aforesaid; whereupon a certain William Speiden, present here in court in his proper person, (with the consent of the said plaintiff, by his attorney aforesaid,) undertakes for the said defendant, that in case the said plaintiff shall recover judgment against him in the plea aforesaid, or that he, the said defendant, shall be therein legally convict, that then the said defendant shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid, in satisfaction thereof, or that he, the said William Speiden, will do the same for him.

Rule plea.

And thereupon, on the motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here that the said defendant answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against him in default there-

of. And the said defendant, by his attorney aforesaid, defends the force and injury when, and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted; the same day is given to the aforesaid plaintiff also.

March term, 1843.

At which said 4th Monday of March, 1843, come into court here the said parties, by their attorneys aforesaid; and the said defendant, by his attorney aforesaid, as before, defends the force and injury, when and so forth; and as to the coming, with force and arms, and also the battery and wounding aforesaid, of him, the said plaintiff, above supposed to be done, and also as to the imprisonment aforesaid, in the declaration aforesaid charged, the said defendant saith he is in no sort guilty. And the said parties, by their attornies aforesaid, file in court here the following agreement, to wit:

Agreement that defendant may give the special matter in evidence.

It is agreed that the defendant may give the special matter in evidence as though it was fully pleaded.

H. MAY, *for pl'ff.*
JOS. H. BRADLEY, *for deft.*

Issue joined, and venire facias.

And of this the said defendant puts himself upon the country, and the said plaintiff, by his attorney, in like manner, and so forth: therefore let a jury thereon appear before the court here on the fourth Monday of November next, by whom, and so forth; and who neither, and so forth; to recognise, and so forth; because as well, and so forth; and the same day is given to the aforesaid parties, then and there, and so forth.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-three, comes into the circuit here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid: thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next.

March term, 1844.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-four, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid: thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the fourth Monday of November next.

Nov. term, 1844.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-four, to which said day the said cause was continued, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid: thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the fourth Monday of March next.

And now, at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-five, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid: whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the pannel of petit jurors returned to the court here by the marshal of the District of Columbia, be drawn by ballot, according to the act of assembly in such case made and provided; and thereupon the twenty persons being so drawn and written upon two lists, and one of the said lists to each of the counsel for the respective parties; and the said counsel have stricken out four persons from each of the said lists; the remaining twelve being called, came, to wit:

Jury.

1. Thomas Bangs,
2. Lewis Smith,
3. Charles Myers,
4. Hy. H. McPherson,
5. Avery Smoot,
6. David B. Denham,
7. George W. Harkness,
8. Richard M. Beall,
9. Elias Travers,
10. Thomas Morgan,
11. George Lambright,
12. Samuel Hanson.

Verdict—Guilty—Damages—Judgment.

Who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendant is guilty of the premises in manner and form as the said plaintiff above against him hath complained; and they assess the damages of him, the said plaintiff, by occasion of the premises, to the sum of five hundred dollars, current money; therefore, it is considered by the court here that the said plaintiff recover against the said defendant, as well the sum of five hundred dollars, current money, his damages aforesaid, by the jurors aforesaid in form aforesaid assessed, as the sum of dollars and cents, by the court here unto him on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended; and the said defendant in mercy, and so forth.

Test: W. BRENT, *Clk.*

Mem.

Memorandum. Before the jurors aforesaid retired from the bar of the court here, the said plaintiff, by his counsel aforesaid, filed in court here the following bills of exceptions, to wit:

Plff's 1st bill of exceptions.

Plaintiff's 1st bill of exceptions.

SAMUEL DINSMAN, }
vs. }
CHARLES WILKES. }

At the trial of this case the plaintiff, to support the issues on his part joined, read in evidence, to have the same effect, by consent of parties, as if the original enlistments of the said plaintiffs were produced, the certificate of Major Parke G. Howl, adjutant of the marine corps of the United States, (copied in page 32;) and also read in evidence, for the purpose of shewing the forms and mode of such enlistment, without objection, certain blank forms, used and adopted in all regular enlistments or re-enlistments into said marine corps, (copied in page 33.) And said Howle testified, he being examined as a witness, that, by the rules and regulations of said corps, the said forms of said enlistment were required to be endorsed by the recruiting officer, for the purpose of identifying the officer by whom such enlistment was made, and that such enlistment was regularly made.

The said plaintiff then gave evidence further tending to prove, that they embarked, under orders as privates in said marine corps, in the United States Exploring Expedition, which sailed from the United States, on or about the 18th day of August, A. D. 1838, under the command of the defendant, who was a lieutenant in the navy of the United States; that afterwards, while the United States ship Vincennes, one of the vessels of the said expedition, was at the island of Oahu, one of the Sandwich Islands, in the Pacific ocean, (from which American vessels frequently sailed to the United States,) the term of four years, for which the said plaintiff had enlisted as aforesaid, expired and was fully ended; and the said plaintiff, then and there, to wit, on the 16th day of November, A. D. 1840, on board said ship, claimed of the defendant his discharge from the service of the United States, and refused to perform the duties required of them by the defendant, (still commanding said expedition and said ship,) and his subordinate officers; whereupon the defendant, then and there, committed the *the* trespasses, as alleged in the declaration in this case on the part of the said plaintiff; and afterwards, the said expedition and the said ship sailed from the said island, carrying said plaintiff on board of said ship, commanded by the said defendant in person; and that, while the said plaintiff was on board of said ship, as last aforesaid, he was repeatedly flogged and put in irons, by order of said defendant, for refusing to perform the duties of a marine on board of said ship, required of him by order of said defendant; and the said plaintiff was detained on board said ship, or

some other vessel of said expedition, continually by order of said defendant, and against his consent, until the return of said ship or other vessel to the United States, about the 15th of June, A. D. 1842, although the said ship touched at various foreign ports before her said return to the United States, and after the term for which said plaintiff had enlisted, as aforesaid, was completed and expired.

The said plaintiff then rested his case.

And thereupon the defendant offered evidence tending to shew, that, after the passage, by the Congress of the United States, of the act of 1836, entitled An act, &c., the President of the United States proceeded to carry the said act into effect, and appointed Thomas Ap C. Jones, a captain in the United States navy, to command the expedition authorized by said act; that the vessels designed for the expedition were assembled at New York, under the command of said Jones, and were there in the month of October, 1837, and on the 21st day of said October, the said Jones issued his general order No. 2, (copied in page 69;) that the said general order was read to the ship's crew of the ship Relief, on which ship the said plaintiff was at that time serving as a marine under his said enlistment; that it was read by the officer then in command of said ship, and by him placed in the "booby hatch," a conspicuous part of said ship, to which all the men had access, for their perusal, and remained there during the greater part of the morning; that the said Jones also addressed an order to the pursers of the squadron, in the words and figures following, (copied in page 34;) the defendant then produced to the court the following written papers, viz: a paper purporting to be a contract between said Jones and the plaintiff, with other persons, and a paper purporting to be a receipt for bounty, (copied in pages 35,) and then proved to the court by the subscribing witnesses thereto, that said papers were signed by the said plaintiff as they purport to be, and that before signing the same the said papers were read to said plaintiff; and that said first paper, purporting to be a contract as aforesaid, was prepared by order of said Jones, and that the subscribing witnesses thereto were commissioned officers of the United States; and that, after the signing of said papers, the said plaintiff received on the 25th of October, 1837, the sum of $15, and on the 7th , 1838, the further sum of $6, making $21 in all, being a sum equal to three months' pay, and the same was paid to and received by said plaintiff as bounty; and the defendant further offered evidence to the court, tending to show, that from that time forth to his return to the United States, in the said month of June, 1842, the said plaintiff received from the said United States his monthly pay of $7 per month, being the amount stipulated in the said shipping articles, over and above the sum of $21, paid and received as aforesaid as bounty; and he further offered evidence to the court to shew, that the said Jones resigned his said command before the sailing of the said expedition; and that, on the 20th April, 1838, it was given to the defendant by order of the Secretary of the Navy of that date, (copied in page 71.)

That said defendant sailed from the United States in the month of

August, 1838, in command of the said squad on under the instructions of the President, which it is agreed may be read from the printed history of the said expedition.

That, about the time of the sailing of the said expedition, the pursers thereof received from the 4th Auditor of the Treasury a communication enquiring by what authority the said bounty had been paid to the marines, of whom one was the said plaintiff, and disallowing it in the accounts of said pursers, and requiring them to charge the same to the men on their pay accounts, and deduct the same therefrom, which said last communication was reported by said pursers to the defendant; and thereupon the defendant issued his order of the 14th Sept., 1838, now read to the court, (copied in page ,) which order was thereupon obeyed by said pursers, and the said "bounty money" never was charged to said men.

And the said defendant then offered to read in evidence to the jury the said written papers, so as aforesaid signed by the plaintiff, and also the said letter of said defendant, addressed to the pursers as aforesaid, in connection with each other, and with all the evidence hereinbefore stated, but the plaintiff, by his counsel, objected to the admissibility of the said written paper, purporting to be a contract or shipping articles; and also to the admissibility of the said receipt for bounty; and also to the admissibility of the said letter of the said defendant, whether the same are offered as independent evidence, or in connection with each other, or with other evidence; but the court overruled said objections, and suffered all of said papers and the said letter to be read in evidence to the jury, as competent testimony. And the said plaintiff excepts to the opinion of the court, and to the admissibility of each and every of said papers, and said letter so admitted, and claims the same benefit of exception as if each of said papers and the said letter were separately excepted to; and this, their bill of exceptions, is signed, sealed, and enrolled this 24th day of April, A. D. 1845.

W. CRANCH [SEAL.]
[SEAL.]

Major Howle's certificate.

Certificate of Major Howle, referred to in plaintiff's 1st bill of exceptions, page 26, to wit:

Muster roll of the Marines of the Exploring Squadron, agreeably to the last returns received at the Adjutant and Inspector's office.

Names.	Rank.	Date of enlistment.	Remarks.
Philip Baab,	Private	15 Nov., '36	Guard of the sloop Vincennes, on the 30th May, 1842.
Samuel Dinsman,	"	21 Nov., '36	Guard of the brig Porpoise, on the 31 March, 1841.

I certify, that it appears from the record of this office, that the above named men, late of the exploring squadron, enlisted in the marine corps of the United States for four years from the dates of their enlistments; and further, that I have carefully compared the dates of enlistments, as set forth in the above roll, with the irrespective enlistments on file in this office, and that the dates are true copies taken from the originals.

P. G. HOWLE,
Adjutant & Inspector.

Head qrs. of the Marine Corps, Adjutant & Inspector's office, Washington, 14th July, 1842.

Plaintiff's exhibit B.

Plaintiff's exhibit B. Blank form of enlistment referred to in plaintiff's 1st exception, page 27.

I do acknowledge that I have voluntarily enlisted myself to serve four years in the marine corps of the United States, unless sooner discharged, upon the terms mentioned in the act passed the 11th day of July, 1798, entitled "An act for establishing and organizing a Marine Corps;" and also the act passed the 2d day of March, 1833, entitled "An act to improve the condition of the non-commissioned officers and privates of the army and marine corps of the United States, and to prevent desertion;" and that I have had read to me the rules and articles of the army and navy against mutiny and desertion.

Witness my hand, this day of 184 .

In the presence of—

I do solemnly swear, (or affirm, as the case may be,) that I will bear true allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies or opposers whatsoever, and observe and obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles for the government of the army and

navy of the United States; and further, that I am of the full age of twenty-one years.

Sworn before me this day of 184 .

Size roll.

a private, born in State of county of town of enlisted at for four years, by aged years, feet, inches high, eyes, hair, complexion, by trade or occupation a

Remarks.

I certify that, *that* the above recruit is free from bodily defects, and is qualified to perform the duties of a soldier.

Com'r Tho. Ap Catesby Jones' order to pursers, referred to in plaintiff's exceptions, page 29.

Macedonian, Oct. 31st, 1837.

To Pursers E. T. Dunn and William Speiden:

In paying bounty to the petty officers, seamen, marines, &c., in accordance with the orders of the hon. Secretary of the Navy, dated September 18, 1837, you are not to exceed three months pay to each person aforesaid, nor is the bounty to be paid to any man until he has signed the new articles, witnessed by a commissioned officer.

The signature of any individual in the appropriate column, against each man's name, will be sufficient to pass the amount to your credit at the Treasury Department.

Respectfully, &c.,
THO. AP CATESBY JONES,
Com'g S. S. S. & Exploring Ex.

Contract between Tho. Ap. Catesby Jones, esq., and the plaintiffs, and receipt for bounty, referred to in plaintiffs' excpts., page 29, marked exhibit A.

We, the subscribers, non-commissioned officers and privates of marines, do, and each of us doth, hereby agree to and with Thomas Ap. Catesby Jones, captain of the United States navy, in manner and form following, that is to say: In the first place, we do hereby agree, for the consideration hereinafter mentioned, to enter into the South Sea Surveying and Exploring Service of the United States, and in due and seasonable time to repair on board such armed vessel or vessels as may be ordered on that service; and to the utmost of our power and ability, respectively, to discharge our several services or duties, and in every thing to be conformable and obedient to the several requirings and lawful commands of the naval officers who may from time to time be placed over us.

Secondly. We do also oblige and subject ourselves to serve, during the term of the cruise; and we do severally oblige ourselves, by these

articles, to comply with, and be subject to, such rules and discipline of the navy of the United States as are, or that may be, established by the Congress of the United States.

Thirdly. The said Thomas Ap. Catesby Jones, for, and in behalf of, the United States, doth hereby covenant and agree, to and with the said non-commissioned officers and privates of the marines, who have hereunto signed their names, and each of them, shall be paid the consideration for such services, the amount per month which, in the column hereunto annexed, is set opposite to each of their names, respectively; and likewise to advance to each and every of them, *three months bounty*, the receipt whereof they do hereby acknowledge; and that they shall be punctually discharged at the expiration of the term of their enlistment or as soon thereafter as each vessel of the expedition shall return to a port of safety in the United States.

Name.	Grade.	Pay pr. mo.	Signatures.	Witness.
Philip Babb - -	Private -	$7	his Philip ⋈ Baab - - mark.	James Edelin.
Samuel Dinsman -	" -	7	his Samuel ⋈ Dinsman - mark.	James Edelin.

TREASURY DEPARTMENT,
Register's Office, January 13, 1843.

I certify the within to be true copies of the originals on file in this Department.

T. L. SMITH, *Register*.

Be it remembered, that Thomas L. Smith, esq., who certified the annexed transcripts, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Walter Forward, Secretary of the Treasury of the United States, have hereunto subscribed my name, and [SEAL.] caused to be affixed the seal of this Department, at the city of Washington, this thirteenth day of January, in the year of our Lord 1843.

W. FORWARD,
Secretary of the Treasury.

Defendant's 1st bill of exceptions.

Defendant's 1st bill of exceptions.

On the further trial of this cause, and after all the evidence contained in the foregoing bills of exceptions, as well those taken by the plaintiff

in his said first bill, as also those taken by defendant, and the rulings of the court therein contained, the defendant, further to maintain the issue on his part joined, offered to give evidence tending to show, that after the sailing of the said squadron under his command, to wit, in August, 1838, from the waters of the United States, and after the receipt, by the pursers of the said squadron, of the said letter of the 4th Auditor, inquiring by what authority the said pursers had paid the said bounty to the said marines, and requiring them to charge them therewith; the marines on board his said ship murmured at the said requisition of the said 4th Auditor, and that said plaintiffs were on board the said ship, and so continued up to the time of the said supposed grievances, without objection; and after the said supposed grievances, they continued to serve as marines in the said squadron, and received their pay as such marines, until their arrival in the United States, where they were discharged. And, also, that Simeon A. Stearns was the non-commissioned officer in command of said marines during the whole cruise, from the time of their sailing to their arrival in the United States, there being no commissioned officer of marines attached to the said expedition; that he also acted as quarter-master of marines, and he was the only medium of communication, according to the rules and regulations of the service, between the said marines and the said defendant, commanding as aforesaid. And, thereupon, he offered further evidence to show, that the defendant, at the time he issued to the said pursers the said order, contained and set out in plaintiff's 1st bill of exceptions, not to charge the men with the said bounty, he communicated the said order, so issued by him as aforesaid, to the then Secretary of the Navy, by a letter, in the words and figures following, to wit, (copied in page 74,) and accompanied the said offer with proof that the said letter was received by the said Secretary of the Navy; and also offered to read the said letter (or report in the form of a letter) made by the said Sergeant Simeon A. Stearns to the defendant, and referred to in his, the defendant's said letter, last mentioned, to the said Secretary of the Navy, accompanying the said offer with proof of the handwriting of said Stearns, and that he is now (if living) out of the jurisdiction of the United States.

And the plaintiff, by his counsel, objected to the reading of the same, or either of them, to the jury, and the said court refused to permit the said papers, or either of them, to be read in evidence to the jury; and, thereupon, the defendant, by his counsel, excepts to the said ruling of the said court, and prays that this bill of exceptions may be signed, sealed, and enrolled, according to the statute, which is done accordingly, this 25th day of April, 1845.

W. CRANCH. [SEAL.]

Defendant's 2d bill of exceptions.

Defendant's 2d bill of exceptions.

And on the further trial of the said issues, the said defendant, after all the evidence contained in the foregoing bills of exceptions, made part hereof, and the several rulings of the court set out therein, offered in

evidence the proceedings of a court-martial, held in the city of New York, (and which it is admitted was lawfully called and proceeded in,) for the trial of the said defendant, Charles Wilkes, on certain charges and specifications prepared against him by the Executive of the United States; and among others, upon the charge and specification following, that is to say, (copied in page 41;) and that the said court-martial duly proceeded to try the said Charles Wilkes, on the said charge and specification, and that, on the trial thereof, the said Philip Baab, one of said plaintiffs, was examined as a witness, and the judgment of the said court, on the said charge and specification, was as follows, (copied in page 42.) And the said plaintiff agreeing, that the said extracts may be made from the said record, and considered as if the whole record were herein inserted, object to the reading of any part of the said record as evidence in this cause, except the statements of said plaintiff Baab, contained in said record, which the plaintiff's counsel does not object to, so far as they are relevant to the issues joined; and the court sustains the said objection, and refuses to permit the same to be given in evidence; and the said defendant, by his counsel, excepts thereto, and prays the court to sign and seal this exception, and to cause the same to be enrolled according to the statute, all which is done and ordered, this 25th day of April, 1845.

W. CRANCH, [SEAL.]
[SEAL.]

Specification referred to in the foregoing bill of exception, page 40, to wit:

Charge 4th.—Cruelty and oppression.

Specification.

In this, that the respective terms of service of Samuel Pensyl, Philip Baab, George Smith, and Samuel Dinsman, "private marines," then serving on board the United ship Vincennes, having fully expired on the 16th day of November, 1840, the said Wilkes did refuse to give said marines their discharge, in conformity with the terms of their enlistment; that upon said marines declining to do further duty, the said Wilkes did cause them, on or about the 16th Nov'r, 1840, to be put in double irons, and shortly after, on the same day, to be sent on shore at Honolula, and to be confined in the fort at a place infested with vermin; that upon the 2d day of their confinement, they were separated and kept in solitary confinement; that on 27th November, 1840, by order of said Wilkes, they were deprived of one-half their ration, which consisted mostly of "poe" and goat's meat; that on the 2d of December, 1840, the said marines were taken out and carried on board the U. S. ship Vincennes in irons, except George Smith, who was taken on board the Peacock; that said Wilkes asked them if they would go to duty, and upon their respectfully stating that the term of their enlistment had expired, the said Wilkes then confined them in double irons in the brig, a place of confinement for prisoners in said ship; that on the 4th of December, he, the said Wilkes, had the said Samuel Pensyl, Philip Baab,

and Samuel Dinsman, seized up in the gangway, and inflicted on them one dozen lashes each; that he again confined them; that on the seventh 7*th* of the same month, he had inflicted on them another dozen of lashes each; that after this system of lashing and confinement, for the preservation of their lives, the said marines were compelled, against the terms of their enlistment and against their free will, to do duty in the squadron, under the command of said Wilkes.

Judgment of court-martial.

Judgment of the court-martial on the above specification, referred to in defendant's 2d exception, page 40, to wit:

The 4th charge.

That the specification of the 4th charge is not proven, and
That the accused, of the 4th charge, is not guilty.

Defendant's statement of evidence.

On the further trial of this cause, and after the evidence contained in the aforegoing bills of exceptions on the part of plaintiff and defendant, and made part hereof, the defendant further gave evidence to show that the said squadron, under the command of the said defendant, continued on the said cruise, and proceeded to the great southern seas, and explored and surveyed the Antarctic region as far as it was possible, and in that service the said ship Vincennes received extensive and serious injury; that, proceeding on her said cruise, the said ship Vincennes, in the month of September, 1840, arrived in the port of Honolula, in the island of Oahu, one of the Sandwich islands, in the Pacific ocean, and there came to anchor in the inner harbor, and close to the shore, and proceeded to refit and repair; that it was necessary to the safety of the ship, while undergoing these repairs, to be thus close to the shore, and in the inner harbor, and it would have been unsafe, if not entirely impracticable, to have made them elsewhere; that she had then made a long voyage, and been constantly at sea for a long period of time, during which her foremast had received such injuries that it was found necessary to take it out; her seams were open, and the whole hull required repairing, to be recaulked and painted; her hold had to be broken up, and her stowage overhauled; the water casks were taken out, the sails taken off, and the ship almost stript and dismantled; that about this time, the period of service of some of the seamen who had not shipped for the whole cruise was about to expire, and the defendant, anxious to retain them in the service, addressed the ship's crew, and endeavored to prevail on each of the seamen whose term of service was about to expire to re-ship, and as an inducement to them, offered to give them liberty on shore; and as a reward to all those who had served so long and faithfully, and who were yet bound to continue on the cruise, in the exploration and survey of the northern Pacific, he offered the same favor to them; leave was granted to all, and after their leave had expired, they set about overhauling and repairing the ship; while this work

was going on, the natives, many of whom live almost in the water, were exceedingly troublesome, and surrounded the ship continually, and thus kept up a communication with the men on duty; that soon after the arrival of the said ship at said port, the officers charged with the exploration and survey, and with other scientific duties, went on shore, taking with them their instruments, and such men as were necessary to enable them to perform their duties; the defendant himself being also engaged at the observatory, on shore, pursuing his duty, aided by such officers and men as were necessary, yet keeping within sight of the ship, having a constant communication with her, and going on board as often as was found necessary, and throughout retaining the command; that the general charge of the ship was left to the first lieutenant, who, it is admitted, was a competent, faithful, intelligent, and vigilant officer, aided from day to day by such officers as could be spared from the discharge of other duties pertaining to the expedition; that the general object of the expedition was a peaceful voyage, to explore and survey coasts, seas, and islands, and to make such investigations as might be found practicable in aid of science; and these general objects being held the primary purpose, for the most part, the detail of the ship's service and duty was made subordinate to them, and thus more of the officers and men were for the time withdrawn from the immediate duties of the ship than otherwise would have been; that under these circumstances, while lying in the said port, the marines on board being employed, among other duties, in keeping guard over such men as were from time to time imprisoned in the ship; and before the happening of the events complained of in the declaration, on one occasion, a man confined in double irons, under charge of the marines, was during the night permitted to escape, having first managed to get his irons off; it being the duty of the sentinel to be close to and keep constant guard over him, and the sentinels or guards being changed every two hours, it was found impossible to discover during whose watch the escape had been made; on another occasion a man thus imprisoned was, against the rules, &c., of the ship, furnished with liquor, and while under guard, permitted to get drunk; on another occasion a man thus imprisoned under guard of the marines was permitted to make his escape, and it thus became evident to the defendant that there was among the marines on board great relaxation of vigilance and neglect of duty; and on the 16th November, 1840, Babb and two other marines, separately and collectively, the defendant then being engaged in duty on shore, and the first lieutenant having charge of the ship, refused any longer to do duty as such marines, pretending their term of service was up, and saying they wished to be sent home; that the first lieutenant immediately reported these facts to the defendant, who came on board and summoned the plaintiff, Baab, and the other two marines, before him, and enquired of them if they still refused to do duty; they replied, as they had before said to the first lieutenant, and did refuse; thereupon the defendant ordered them into custody, and directed that they should be sent on shore, and imprisoned in the fort on the island; that a few days

afterwards, Dinsman in like manner refused to do duty, and was sent to the said fort. The defendant then offered the evidence of four officers of the said ship, and of to show that it would have been unsafe, if not impracticable, in the then condition of the said ship, to have confined the said plaintiffs on board; that the fort on the said island, in which the plaintiff was confined, was used as a place of confinement for the seamen of merchant vessels lying in the said port; and that seamen, who had been confined therein, were enlisted in said port, and brought from said fort into the said ship Vincennes; that the Governor professed Christianity, spoke English, and resided within the said fort where he was visited from time to time by various officers of the said ship; that the prison of the said fort is nothing more than the houses erected for the military, and is composed of small huts or houses built in the native fashion, having the back toward the wall of the fort, with the front looking out upon an open space, in front also of the Governor's house; that there are no doors to close these huts or cells, the climate being so mild as not to require them, and the doors being always open, they are thus allowed a freer circulation of air, and rendered more comfortable; that the furniture consists in some instances of a matting on the floor, matting around the walls, and a bunk filled with matting for sleeping; in others there is no mat on the floor, [the floor of all is of earth,] matting only on two sides, and a bunk filled with mats on the floor; that the food supplied to the prisoners is the common food of the inhabitants, and wholesome, palatable, and invigorating, consisting of a vegetable called "*Taro*," and fish; that this plaintiff was allowed to go out once a day out of the walls of the fort, under the charge of a native officer, and his irons were then taken off; that the sergeant of the marines, there being no commissioned officer in command, commanded them, and was also their quartermaster, and as such was bound to look after their comfort, and report their wants to the defendant; and according to the discipline of the ship, and the rules and usage of the service, he was the only person to whom the marines should look, and through whom they could communicate with the defendant; that the said sergeant did visit the plaintiff while in prison, and never did report that he was suffering from confinement or otherwise in want of proper food or raiment; that such report, if ever made, must have been made through the first lieutenant of the said ship, and never was made to or through him; they further showed that, according to the discipline of the said ship, and the rules and regulations of the navy, it was the duty of said sergeant of marines to make report to said first lieutenant of every case in which any vermin of any sort or description were found upon any marine, or among his clothing, and no such report was made to the said first lieutenant by the said sergeant of or concerning the said plaintiff; and also that, in the execution of the duties required of the defendant and the officers and men under his command, in and by the instructions of the President, as set out in the said printed book, no part of the armed force employed in the said expedition was more important than the marines, who were not only required on board said ships for the ordinary duties thereof,

but who were more essential for the protection of the officers and men on shore, while making explorations, surveys, and observations, and gathering the information and facts directed by said instructions; that their services were deemed at the time the said vessels were at Honolulu most requisite in the subsequent part of the cruise; that the said ships were then to visit the wild shores, and the officers and men to come into contact with the ferocious savages of the north west coast of America, where the marine force was especially needed; and it was deemed of the utmost importance to keep that force as large as possible, and that the after experience of the voyage confirmed these impressions; that it was with this view deemed essential to the public interest to keep said plaintiff on board said ship, and to require him to perform the duty of a marine; that the said defendant, with all reasonable dispatch, proceeded with the repairing and refitting of the said ships, which was not completed until the survey and exploration of the said island of Oahu had been finished, and so soon as the said ship was in order, the said plaintiff was brought on board; that, upon being brought on board, he was required by the defendant to go to duty, and refused, and was ordered to be imprisoned in irons; the next day they were brought up, the ship being then under weigh, and having left the said port, and again interrogated by the defendant, and required to go to duty; that he expostulated with said plaintiff, and explained his position, and his duty to punish him if he persisted in such refusal; that he called before said plaintiff the sergeant who commanded him, and who had signed with him the said articles contained in the said contract marked A, and required him to state to said plaintiff explicitly the terms of that contract; that the said sergeant did, in fact, explain it to him, and inform him that he was bound to serve out the cruise; that plaintiff denied having signed any such contract, and refused to go to duty; that defendant pointed out to plaintiff how essential his services were to the public interest, and he still refused; that defendant then ordered him to receive twelve lashes on his bare back, and the punishment was accordingly inflicted in the manner pointed out in the rules and regulations of the navy; that defendant then ordered him to be released, and permitted to go at large among the crew, stating that he did so to give him an opportunity of conversing with his comrades, and learn his obligations, and return to duty; that, on the evening of the same day, the sergeant again reported plaintiff as refusing to do duty; he was again called before defendant, and required to go to duty, and again refused, and was committed to prison as before, and the next morning again brought before defendant, required to go to duty, refused to do so, and *were* punished according to the said usage and discipline, and rules and regulations; that they afterwards went to duty; the defendant, then, farther gave evidence, by the said naval officers, and other civilians attached to said expedition, and on board the said ship, that, on the several occasions of punishment aforesaid, the defendant did not exhibit any appearance of violence or passion, but was calm, temperate, and

cool, and expressed his regret at the necessity he was under of punishing the said plaintiff.

And the defendant further gave evidence, tending to shew, that said plaintiff was not confined in double irons, or separately, in the said prison, but *were* at large within the walls of said fort, and mingling and talking together; and that said fort was a comfortable place of residence, and more so than the prison of the ship in the situation in which the said ship was during the time of said improvement; and further, that defendant had reasonable cause to fear the spread of the disaffection among the said marines; and the officers knew not whom to trust at the time and times of the imprisonment aforesaid of said plaintiff; and that, shortly before the imprisonment of said plaintiff, two marines, on board the ship Peacock, had been arrested, and sent on board the ship Vincennes; that, previous to the arrest of said plaintiff, he, with other men, had agreed among themselves, before they reached Honolulu, to demand their discharge as soon as the terms of their enlistment had expired, and they were in a port where they could be sent home; that, on arriving at Honolulu, and after most of the seamen had re-shipped, and no offer had been made to the marines to reship, they had a conversation, and required their sergeant to report to the captain that their terms were up, and they required to be discharged in that port where *there were* vessels to take them home; and that, while the said ship Vincennes and the Peacock were lying in the said port of Honolulu, two of the marines on board the Peacock were arrested for insubordination and disobedience, and they, together with an orderly seaman, were sent on board the Vincennes, about the 7th Octo., and confined in the said ship Vincennes until a court martial was convened for their trial, which was held on board the Peacock, and by which they were sentenced to be punished, and they were punished; and it was inflicted on them; and after that time the said ship Peacock underwent a thorough overhauling, and very extensive repairs; while she was lying in the said harbor, and while she was undergoing such repairs, some of her men deserted from her; and it was long after the said court martial, and after the execution of its sentence on the said two marines, and they were discharged from imprisonment and returned to duty, that the said plaintiff refused to go to duty.

Plaintiff's statement of evidence.

After the evidence contained in the plaintiff's 1st exception, made part hereof, and the foregoing statement of defendant, the plaintiff further gave evidence, tending to show, that at the time of committing the trespasses in the 1st count of the declaration alledged, and during all the time that said trespasses continued, the defendant could have securely confined said plaintiff on board the said ship Vincennes, without any difficulty and with safety to the said ship Vincennes, her officers and crew; and further, that the said United States ship Peacock, and Porpoise and vessels belonging to said squadron, and under the command of the said defendant, were at the time of the said imprisonment of said plaintiff

in said fort at Oahu, present in the harbor of Honolulu, at said island, and that said ship Peacock was lying within the distance of one hundred yards from said ship Vincennes, at the time the said plaintiff was sent to be imprisoned in the said fort; and further, that said ship Peacock was at that time in a state of good discipline, and that said plaintiff could without any difficulty have been confined on said ship Peacock with perfect safety to said ship, her officers and crew, and that the defendant had no reasonable or probable cause to believe, that he could not have securely confined the said plaintiff on board either of the said ships, without any difficulty, and with perfect safety to said ships, their officers and crew, and without any danger of their causing mutiny, or insubordination.

And the said plaintiff further gave evidence tending to show, that he was by order of the defendant imprisoned in the said fort, in a cell in said fort in solitary confinement, for a period of 15 days, (Baab 18 or 20 days,) that said fort was a low, damp, filthy place, was the common prison for criminals and malefactors among said native inhabitants of Oahu, and the cell in which plaintiff was confined was dark and was not ventilated, and that the same was abounding in vermin; that said fort was distant a half mile from said ship Vincennes, during all the time of said imprisonment; that during all the time the said plaintiff was so imprisoned in said fort, he was in double irons by order of the defendant, and was under the control and discipline of the native governor of said fort, and the native sentinels therein; that during said imprisonment, the only food allowed or supplied to said plaintiff, was supplied by the native officers of said fort, and was only "*taro*" and fish, and nothing else; and that said fish was sometimes, when so supplied, in a rotten state, and said "*taro*" was an unpalatable and unwholesome food to those unaccustomed to feed on it.

That, during the said imprisonment, a change of clothing, nor any part thereof, was not supplied to said plaintiff, but the same was refused to be supplied; and that he became filthy in his person, and, when he was brought away from said fort, and put on board said ship Vincennes, by order of defendant, that said plaintiff was filled with vermin. That, during the whole of said imprisonment in said fort, the said plaintiff was abandoned by the defendant to the sole care, attention, and discipline of the native officers about said fort. That, during the whole time of said imprisonment of said plaintiff in said fort, the defendant securely kept and confined on said ship Vincennes, as prisoners, a chief of the Fegee Islands, and others of the crew of the said ship; and that on the said ship Peacock more than 4 or 5 prisoners were at that time securely confined; and gave evidence by the 1st lieutenant of said ship Peacock, tending to prove that, at the time of said imprisonment of said plaintiff in said fort, fifty-five marines could have been securely confined in said ship Peacock.

And the said plaintiff further gave evidence tending to prove that the trespasses by floggings and imprisonments inflicted on said plaintiff, by order of the defendant, on said ship Vincennes, as alleged in the declar-

ation in this cause, were immoderate, excessive, disproportionate to the offence alleged against him, and were severer in degree than is allowed by the rules and regulations for the government of the navy of the United States, or the laws and customs in such cases at sea; and that the detention of the plaintiff on said ship or ships, by order of the defendant, after the expiration of his term of enlistment into the said marine corps, was not essential to the public interest, and that defendant had no reasonable or probable cause to believe that such detention was essential to the public interest. That, soon after the enlistment of said plaintiff had expired at the Island of Oahu, and he had requested his discharge and leave to return to the United States, the defendant discharged about 15 seamen, at their request to be discharged, and permitted them to go to the United States; that the marine guard of said ship Vincennes was larger in numbers and force of men, by 3 or 4, than is the usual and customary complement of marines on vessels of her class in the navy of the United States; that the defendant, of his own authority, and against his instructions from the President of the United States, deviated from the course of his cruise, as directed in said instructions, and of his own authority prolonged the cruise of said vessels belonging to said exploring expedition.

Defendant's 3d bill of exceptions.

Whereupon the defendant prayed the court to instruct the jury, that if from the evidence aforesaid the jury shall find that the said plaintiff signed the said contract marked A, and afterwards received the bounty stipulated therein, and signed a receipt therefor, and remained and continued on board a vessel of the United States under the command of an officer of the United States navy, employed in the expedition in the said contract named, doing duty as marines, and receiving wages therefor until the return of the said expedition to the United States in the month of June, 1842, (except when imprisoned as hereinafter stated;) and that after the signing of said contract by said plaintiff, the defendant then being an officer in the navy of the United States, by order of the President took the command of said expedition, and continued in command thereof during the whole cruise; that the said plaintiff sailed from the United States in the ship Vincennes, one of the ships of the United States navy detailed for the said service, and under the immediate command of the defendant; that the said ship, with the said defendant as commander, and the said plaintiff as one of the marines on board, sailed to the southern Pacific ocean and the South Seas, and during her cruise received such injuries, and became so much out of repair as to render it necessary to overhaul and repair her; and that she reached the port of Honolula, in the island of Oahu, in the month of September, 1840, and was there, for the purpose of the said repairs and the safety of the ship, brought into the inner harbor and close to the shore; and while there for the purpose of said repairs and refitting, her foremast was taken out, her hold broken up, and other extensive work done on board; and that while said repairs were being made, the defendant and other offi-

cers, and such men as were necessary for that purpose, were on shore, making such explorations, surveys, and observations, as were required by the instructions of the President, (copied in page .)

And that while said repairs were so as aforesaid being made, and the said defendant and other officers and men were so employed on shore, the marine guard on board said ship suffered men placed under their guard to escape, and another to get drunk while under guard; and afterwards the plaintiff, with other marines, severally and collectively refused to do duty on board said ship, and were therefore ordered by the defendant to be confined in a fort on the island, in charge of the natives of the island; and if they shall be of opinion further, from the facts and circumstances, and the whole evidence, that it would have been unsafe to confine the said plaintiff on board the said ship, and that the said fort was under the charge of a governor who spoke English, and was used as the place of confinement for the seamen of the merchant service, of this and other countries, in the said island; that the sergeant of marines was the officer in command of said marines and the plaintiff on board the said ship, and was also their quartermaster; and that it was his duty to report to the defendant the situation of the said marines, from time to time, and to look after their comfort; and that the said sergeant of marines visited the said fort while said plaintiff was confined there, and made no report to the defendant; that the prisons of the said fort had no doors to them, and the said plaintiff was kept as other prisoners were, and that they were again brought on board the said ship so soon as they could with safety be brought there; then such imprisonment was within the lawful authority and duty of the said defendant, and he is not liable therefor in this action.

And if they shall further find that the said plaintiff was brought from the said fort on board the said ship as soon as it was safe to bring him there, and upon being brought on board, the said defendant, still being in command of said ship, required him to go to duty, and he refused to do so, and thereupon he had him confined in prison on board said ship, in irons, and the next day caused plaintiff to be brought before him, and remonstrated with him, and caused his immediate officer to explain to him his obligation, and the nature of the contract, and then required him to go to duty, and he refused, and thereupon he ordered him to be punished, and he was punished, according to the rules and regulations of the navy; which rules and regulations it has been agreed the jury may find; and after such punishment, directed him to go at large among the crew, that he might converse with them, and so learn his duty, and he did go at large; and on the evening of the same day again refused to go to duty, and was again imprisoned by the defendant; and was again the next day brought before the defendant, and refused to go to duty, and was punished as aforesaid; then it was lawful for the said defendant to punish the said plaintiff as often as, being called upon as aforesaid, he refused to go to duty; and the said defendant is not liable in this action for the said imprisonment and corporal punishment.

Which instruction the court refused to give; and, on refusing, assigned, as reasons therefor, and so instructed the jury, that the word "*unsafe*" seems too vague, uncertain, and equivocal to justify in law such an imprisonment in the fort on the island, in charge of the natives. I think the jury must be satisfied, by the evidence, that there was an urgent necessity of using the fort, in order to justify such imprisonment, especially if the jury should be satisfied there was another armed vessel of the United States in the port, in which the plaintiff might have been safely kept.

On the second part of the instruction prayed, the court said: "I "think it is not a sufficient justification to find that the punishment "was according to the rules and regulations of the navy. In the petty "offences which by those rules are punishable by flogging, there is a "limit within which the officer has a discretion, which should be ex- "ercised soundly and reasonably; and, in order to justify the officer, "the jury must be satisfied that it was so exercised. In the case of "such petit offences I think each punishment settles all previous offences "of that kind. If, after such punishment, a new offence be commit- "ted, it will of course be liable to a new punishment. The shipping "articles alone did not justify the corporal punishment. In no case, "unless by express statute, can corporal punishment be lawful, unless "it be reasonable, according to the aggravation and circumstances of "the case, and the reasonableness must be found by the jury, or the "punishment cannot be justified." To which refusal by the court to give the said instruction so prayed by the defendant, and also to the opinion and instructions so given by the court to the jury, the defendant, by his counsel, excepts, and prays the court to sign and seal this bill of exceptions, and to cause the same to be enrolled according to the statute; which is done this 29th day of April, 1845.

W. CRANCH. [SEAL.]
[SEAL.]

Defendant's 4th bill of exceptions.

And thereupon the defendant further prayed the court to instruct the jury, that if, from the evidence aforesaid, the jury should not find that the said plaintiff made the said contract and received the said bounty, but that he was, previous to the said alleged grievances, an enlisted marine on board the said United States ship Vincennes, a public vessel of the United States, employed on foreign service, under the command of the defendant, and that the defendant was the commander of the expedition on which she was employed, and the time of service of the said plaintiff, enlisted as aforesaid, expired while he was on board said ship on foreign service, and his detention was deemed essential to the public interests by the said commander, then it was lawful for the said defendant, commander as aforesaid, to detain the said plaintiff on board the said ship; and the said plaintiff was thereby made subject to the laws and regulations for the government of the navy; which instruction the court refused to give, in the form in which it was prayed, being of opi-

nion, and so instructed the jury, that the burthen of proof was on the defendant to show that the detention of the said plaintiff was essential to the public interests, and that it was not confided absolutely to the discretion of the commander; and thereupon the said defendant, by his counsel, excepts, and prays the court to sign and seal this bill of exceptions, which is done; and the same is ordered to be enrolled, according to the statute, this 30th April, 1845.

W. CRANCH. [SEAL.]
[SEAL.]

Defendant's 5th bill of exceptions.

Whereupon the defendant prayed the court to instruct the jury, that if, from the evidence aforesaid, the jury shall find that the said plaintiff, on the day of , enlisted as a marine in naval service of the United States, and was never discharged therefrom by the President of the United States; and, being so enlisted, he was, during his term aforesaid, ordered on board the Vincennes, a United States man-of-war, under the command of the defendant, on foreign service, and while on board said vessel, on such foreign service, his term of service expired; and if, from the said evidence, the jury shall farther find that the detention of the said plaintiff on board the said ship was essential to the public interests, then it was lawful for the defendant so to detain the said plaintiff as aforesaid, and being so detained, was thereby subject to the rules and regulations of the navy of the United States; and if the jury shall further find the said plaintiff, being so detained as aforesaid refused to do duty on board the said ship, upon being required to do so by the defendant, then it was lawful for the defendant to punish him with stripes, according to the said rules and regulations, for every offence not exceeding twelve lashes; and every such refusal was a new offence, for which he was subject to punishment; and every such punishment was a full satisfaction for every such offence to the time of the infliction thereof. Which instruction the court refused to give; and thereupon the said defendant, by his counsel, excepts thereto, and prays the court to sign and seal this bill of exceptions, which is done, according to the statute, this 30th day of April, 1845.

W. CRANCH. [SEAL.]
[SEAL.]

Defendant's 6th bill of exceptions.

Whereupon the defendant further prayed the court to instruct the jury, that if, from the evidence aforesaid, the jury shall find that the said plaintiff, on day of , enlisted into the marine corps of the United States; and afterwards, on the day of April, 1838, while in the said service, and during the said enlistment, was ordered on board the Vincennes, a vessel in the navy of the United States, and, as such marine, proceeded in the said ship on foreign service, under the command of the defendant; and the time of service of the said plaintiff, enlisted as aforesaid, expired while he was

on board the said ship on foreign service, and his detention was deemed essential by the commander of the expedition in which he was engaged, to the public interests, then it was lawful for the said defendant, commander as aforesaid, to detain the said plaintiff on board the said ship; and the said plaintiff was thereby made subject to the laws and regulations for the government of the navy, and being so subject, if he refused to do duty on board said vessel when required by said commander, then it was lawful for the said commander, in his discretion, to punish him under the rules and regulations of the navy, not exceeding twelve lashes for every such refusal, provided the said punishment was inflicted between each of said refusals, and he is not liable therefor in this action; which instruction the court refused to give; and thereupon the defendant, by his counsel, excepts, and prays the court to sign and seal this bill of exceptions, which is done accordingly this 30th April, 1845.

W. CRANCH. [SEAL.]
[SEAL.]

Defendant's 7th bill of exceptions.

Whereupon the plaintiff, by his attorney, prayed the court to instruct the jury, that if the jury believe from the evidence aforesaid that the said defendant could have securely kept and confined the said plaintiff on board the said ship Vincennes, or on board the said ship Peacock, with safety to the said ships, their officers and crews, then the defendant had no right to imprison said plaintiff in said fort in the island of Oahu; and the jury may give such damages therefor as upon the whole evidence aforesaid they may think the said plaintiff entitled to, provided the jury shall find that the said ships Vincennes and Peacock were together, at the time of said imprisonment, in the said harbor of Honolulu, and were under the command of the defendant, and that said imprisonment in said fort was caused and continued by order of the defendant; which instruction the court gave as prayed; to which instruction the defendant, by his attorney, excepts, and this, his bill of exceptions, is signed, sealed, and ordered to be enrolled, this 30th day of April, 1845.

W. CRANCH. [SEAL.]
[SEAL.]

Defendant's 8th bill of exceptions.

Whereupon, the plaintiff further prayed the court to instruct the jury, that if, from the evidence aforesaid, the jury believe that the floggings and imprisonments of the said plaintiff, on board the said ship Vincennes, alleged in the declaration in this cause, were immoderate, excessive, unreasonable in degree, and disproportioned to the alleged offences, and that such punishment was severer in degree than the rules and regulations for the government of the navy of the United States, or the laws and customs in such cases at sea, authorizes, then the plaintiff may recover such damages therefor, as, upon the whole evidence, the jury may think he ought to have; provided the jury shall find that the said floggings and imprisonments were inflicted by order of the de-

fendant; which instruction the court gave as prayed; to which instruction the defendant, by his counsel, excepts; and this his bill of exceptions is signed, sealed, and ordered to be enrolled this 30th day of April, 1845. W. CRANCH, [SEAL.]
[SEAL.]

Defendant's 9th bill of exceptions.

Whereupon, the plaintiff further prayed the court to instruct the jury, that if the jury believe, from the evidence aforesaid, that the detention of the plaintiff, as alleged in the declaration in this cause, after the term of his said enlistment in the marine corps had fully expired, was not essential to the public interests, then such detention was unlawful, and the plaintiff is entitled to recover such damages therefor, as, in the opinion of the jury, from the whole evidence, he ought to have; provided, the jury shall find that the said plaintiff was detained by order of the defendant; which instruction the court gave as prayed; to which instruction the defendant, by his counsel, excepts; and this his bill of exceptions is signed, sealed, and ordered to be enrolled this 30th day of April, 1845. W. CRANCH, [SEAL.]
[SEAL.]

Test: W. BRENT, *Clerk*.

General Order, No. 2.—Referred to in plaintiff's 1st exception, page 29.

General Order, No. 2.

To the petty officers, seamen, and marines, composing the crews of the vessels of the United States South Sea Surveying and Exploring Expedition:

My general order of the 5th instant made you acquainted with the disposition of the Government towards you, as well as with the outline of the rules by which the vessels under my command are to be regulated on our contemplated expedition. Sufficient time and opportunity have now been allowed you to make up your mind, after mature reflection, whether or not you will accept the terms offered for new entry.

Although I have no special authority from the hon. Secretary of the Navy to grant you liberty on shore, I will, nevertheless, add that indulgence to the terms already offered; and, in taking upon myself this responsibility, for one and all of you, I do it upon the principle, that, without mutual confidence between officers and men, there can be but little hope of success in our undertaking; and as I have seldom or never found the true sailor false to his promise, I have no reason now to expect it of you.

If, however, there is *one* among you who feels that *he cannot trust himself*, let him not touch this sacred fund—this free offering of your country. Remember that the bounty you receive comes to you as a gratuity. It is not to be entered into your accounts. You receive it and appropriate, each individual, according to his own unrestrained inclination. But remember, also, should any man who takes upon him-

self this new obligation by affixing his name to these new articles, sealed by the receipt of *bounty*, and then proves false to his engagements, his country, and commander, who stands pledged as your surety, such individual will be the object of scorn and contempt in the estimation not only of every true sailor, but of every honest man, whether on land or on sea.

Forty-eight hours is the limit set to your liberty on shore, and this is to be granted to all who re-enter for three years from the first day of November next ensuing.

The new articles are exactly similar to those you have already signed, except that you are to receive *three months' bounty*, instead of three months' advance pay, which you received at the time of your original entry.

The respective commanders will carry the foregoing order into effect as soon as their vessels are anchored and safely secured off the navy yard, by granting forty-eight hours liberty to each petty officer, seaman, ordinary seaman, and man, and to the boys such indulgence as may be deemed proper. But not more than one-fourth part of each ship's company can be permitted to be on shore at one and the same time.

Purser Edward T. Dunn will make the necessary arrangements for the payment of the three months' bounty, as above authorized.

Captain Edelin will carry into effect so much of this order as relates to the marine guard.

THO. AP. CATESBY JONES,
Com'g S. S. S. and Ex. Expedition.

FRIGATE MACEDONIAN,
NAVY YARD, BROOKLYN, *October* 21, 1837.

Appointment of Lieut. Comdt. Charles Wilkes to the command of the S. S. S. and Ex. Expedition, referred to, page 30.

NAVY DEPARTMENT, *20th April*, 1838.

SIR: With the approbation of the President of the United States, you are hereby appointed commander of the South Sea Surveying and Exploring Expedition, and you will proceed forthwith to New York and report to Com. Ridgely for that purpose.

After having reported to Com. Ridgely, you will, without delay, enquire into the present state of the preparations and outfit for the expedition, and report the same to the Department.

You will then select such instruments and stores as may be required for the expedition, that they may be sent round to Norfolk by the frigate Macedonian and the store-ship Relief, together with the crews intended for the sloops of war and other vessels of the expedition.

You will consult with the board of navy commissioners, should you deem it necessary, as to any minor details connected with your command.

The commissioners of the navy board, as well as Commodore Ridgely, have been advised of your appointment, and instructed to afford

to you every facility in their power to enable you to expedite the sailing of the expedition.

I am, very respectfully, your obedient serv't,

M. DICKERSON.

Lieut. Comdt. CHARLES WILKES,
Comdg. U. S. S. S. S. and Ex. Expedition, Washington.

Letter from A. O. Dayton, esq., 4th auditor, to Wm. Speiden, esq., purser U. S. ship Peacock, directing him to check against the pay of the marines the amount of bounty received by them, to wit:

TREASURY DEPARTMENT,
Fourth Auditor's Office, August 2, 1838.

SIR: Enclosed you will receive a list of marines, who have been, or still are, attached to the Exploring Expedition, with the amount of bounty paid to them, respectively, by Purser E. T. Dunn; and as the 5th section of the act of 2nd March, 1833, entitled "An act to improve the condition of the non-commissioned officers and privates of the army and marine corps of the United States, and to prevent desertion," prohibits "bounties to recruits for enlisting," you will be pleased to check against the pay of such of the marines named on the enclosed lists as are still borne on your rolls the amount of bounty received by them respectively, and notify this office thereof.

I am, sir, respectfully, your ob't ser't,

(Signed) A. O. DAYTON.

(A similar letter to the above was written to Purser R. R. Waldron, of the Vincennes, on the 3d August, 1838. A. O. D.)

To WILLIAM SPEIDEN, ESQ.,
Purser, U. S. ship Peacock, Norfolk, Va.

I certify this to be a true copy from the records of the Fourth Auditor's office of a letter addressed to Purser William Speiden on the 2d August, 1838.

A. O. DAYTON,
Fourth Auditor.

Letter from Capt. Wilkes to Secretary of the Navy that he had ordered the pursers not to charge the men, in obedience to 4th Auditor's requisition, referred to in defendant's 1st bill of ex., p. 38:

U. S. SHIP VINCENNES,
At Sea, Sept. 1st, 1838.

SIR: It was with much surprise I learnt, a few days after sailing from Hampton Roads, that the pursers of the Exploring Expedition had received instructions from the Fourth Auditor to check the marines now in the Exp. Expedition the bounty paid them in November, 1837, by order of Commodore Jones.

I flattered myself that I had, on sailing, overcome all the obstacles that had occurred; and I was not a little excited on finding that a new apple of discord had been thrown into the squadron, and particularly that part of it so valuable and necessary as the marines.

I presume, however, this has been done without a knowledge of the mischief it might produce in the efficiency and progress of the expedition if carried into effect.

As it appears that some of the marines who received the bounty had been in the service a long time, and none of them were recruits; and with a view of preventing any mischievous effects upon those now in the expedition, I have issued an order to the pursers not to check the bounty referred to. A copy of which is herewith enclosed, marked No. 1; also a letter from Serg't Stearns in relation to the subject, marked No. 2. I take leave, also, to enclose a copy of the general order issued by Com'e Jones to the Exp. Expedition in October, 1837, marked No. 3, which appears to me to embrace the case, and has, in my opinion, pledged the faith of the Government fuily; whether he was authorized by the Dep't to give such pledge or not, is, I think, wholly immaterial to the present case. It has been done, and those who have complied and received the bounty believed such to be the fact, which the Department alone could give, thereby binding the contract on the part of the Government, which, acting for the best interest of the service in which we are engaged, I have thought proper to confirm by issuing the order referred to, which, I cannot doubt, will meet your approbation.

I have the honor to be, sir, most respect., your ob't serv't,

(Signed) CHARLES WILKES,
Comdg. Ex. Exp.

To the honorable JAMES K. PAULDING,
Secretary of the Navy, Washington.

Test: W. BRENT, *Cl'k.*

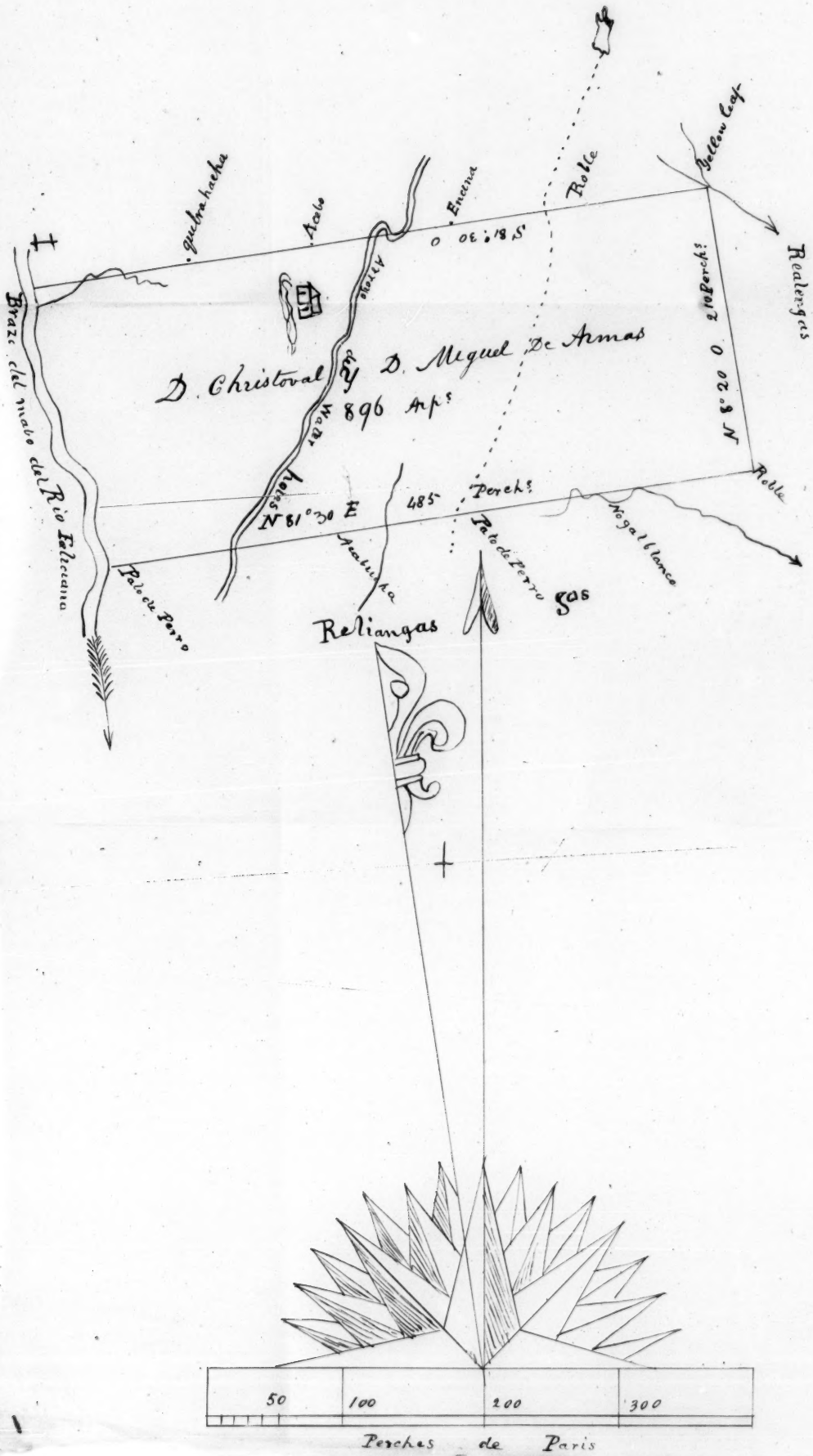
District of Columbia, Washington county, to wit:

I, William Brent, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify, that the aforegoing is a full and perfect transcript of all the proceedings had in the said court in the case of Samuel Dinsman ag't Charles Wilkes.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 29th day of November, 1845.

[SEAL.] W. BRENT, *C'k.*

Filed 18th December, 1845.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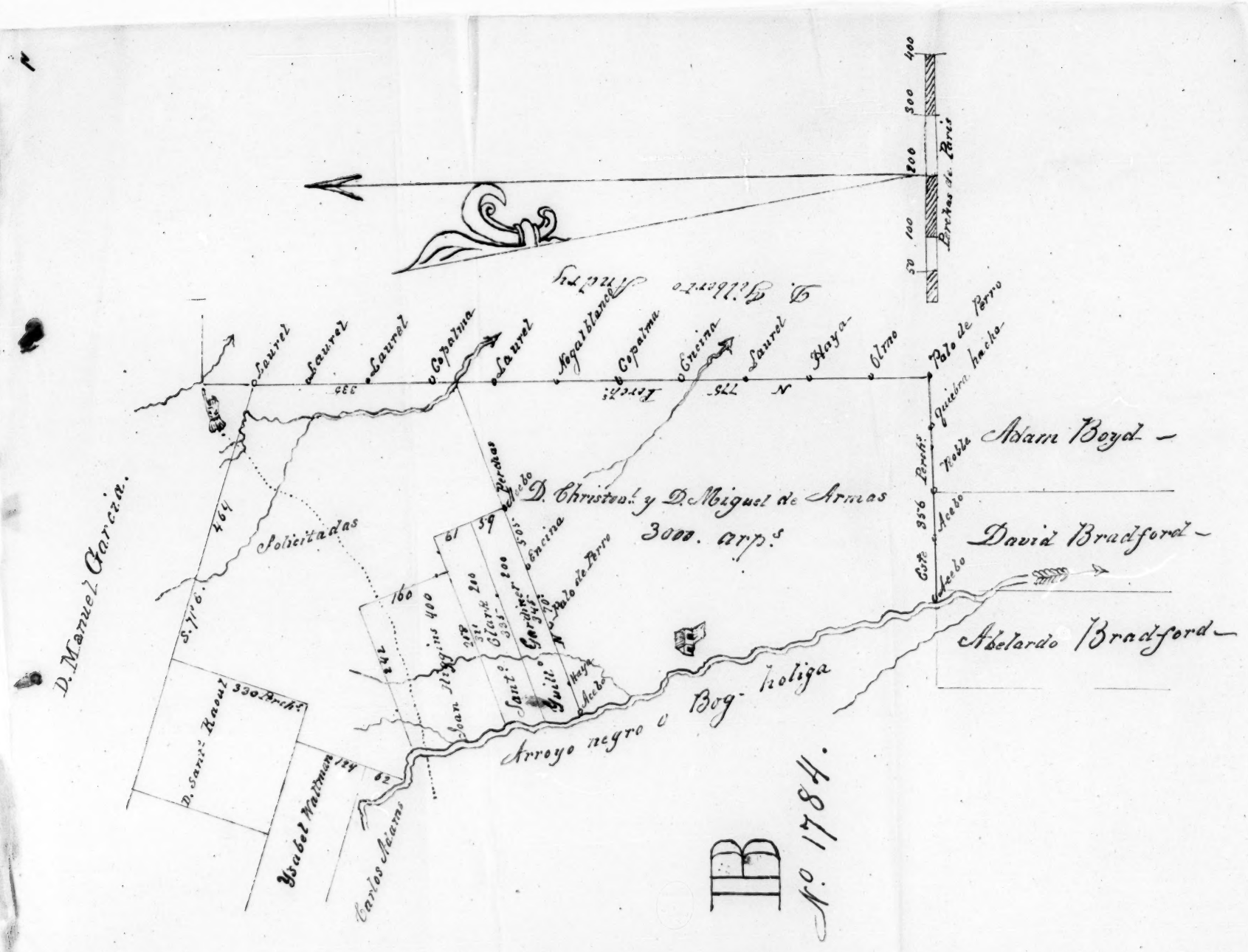
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Abelardo Bradford
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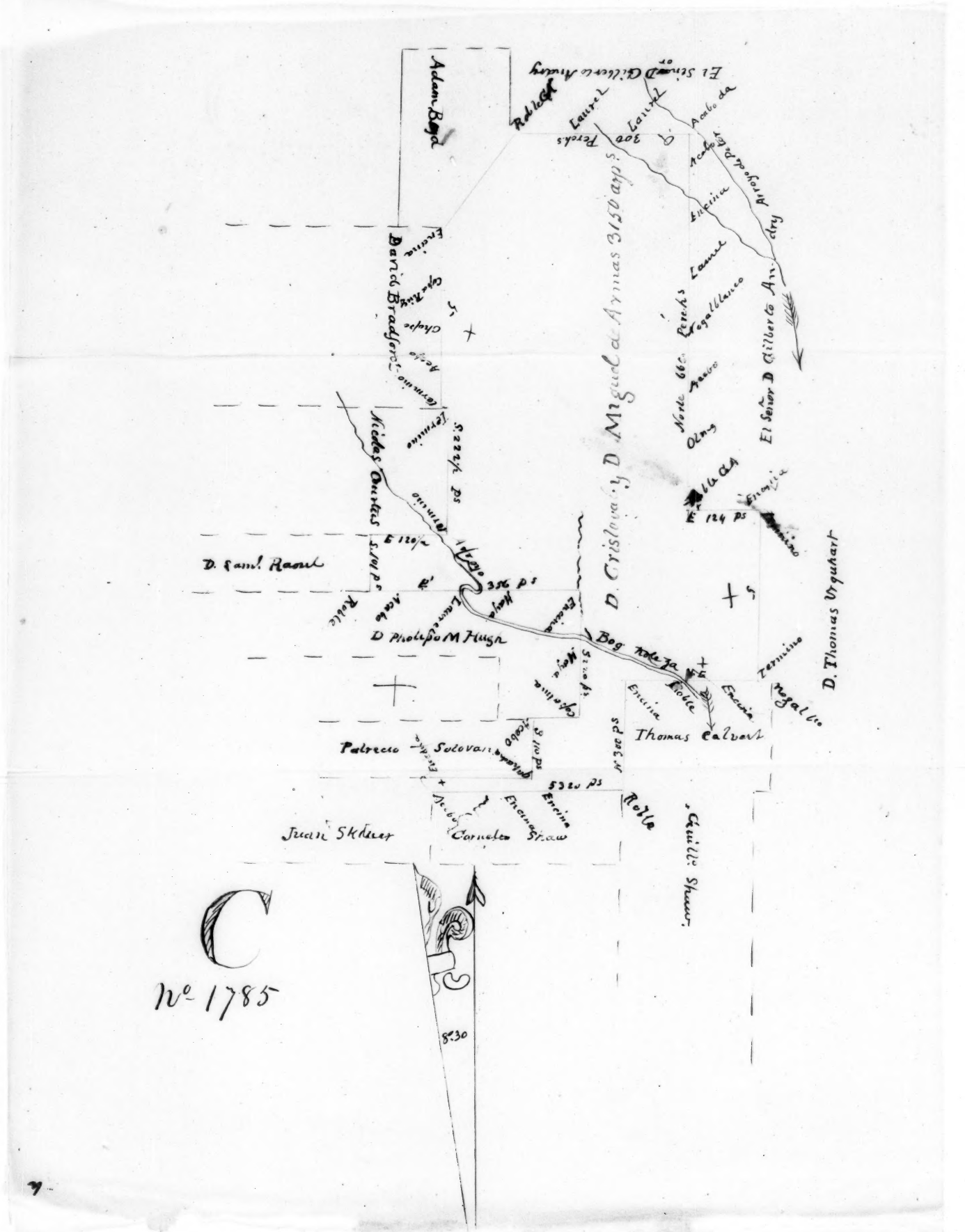
Solicitadas
D. Manuel Garcia.
Arroyo negro ó Bog.
Ysabel Waltman
Carlos Adams
No 1784.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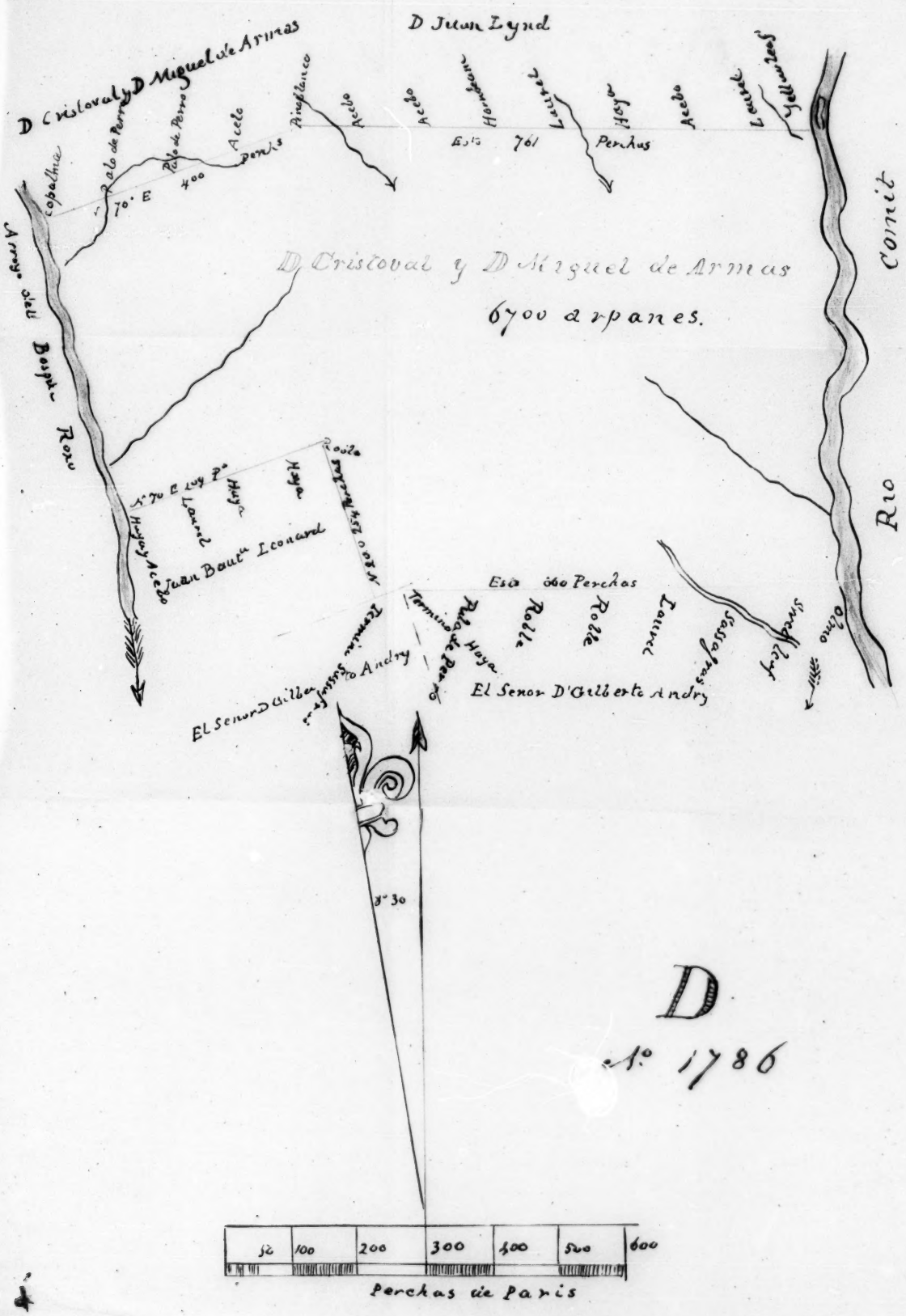
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Esta 660 Perchas
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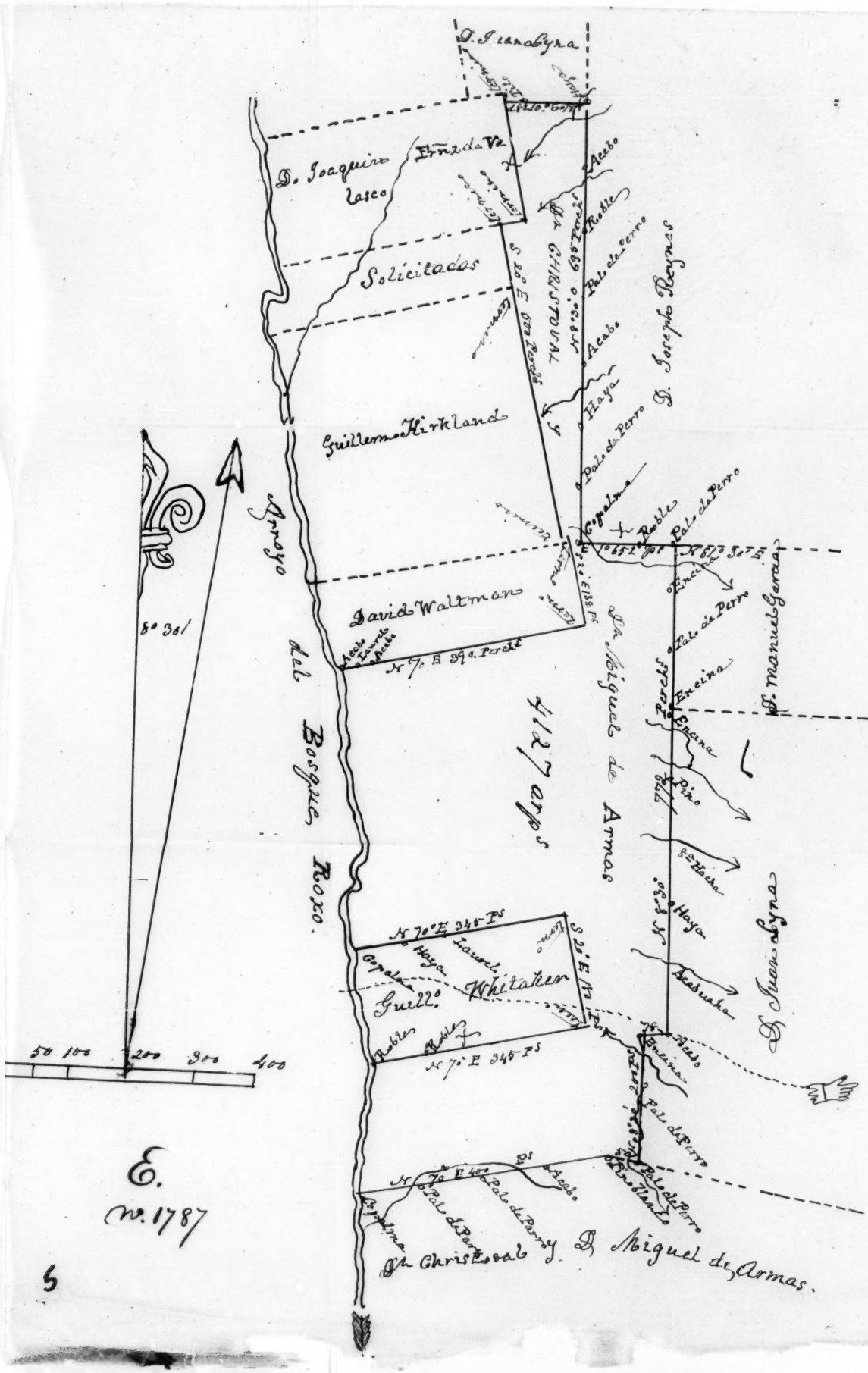
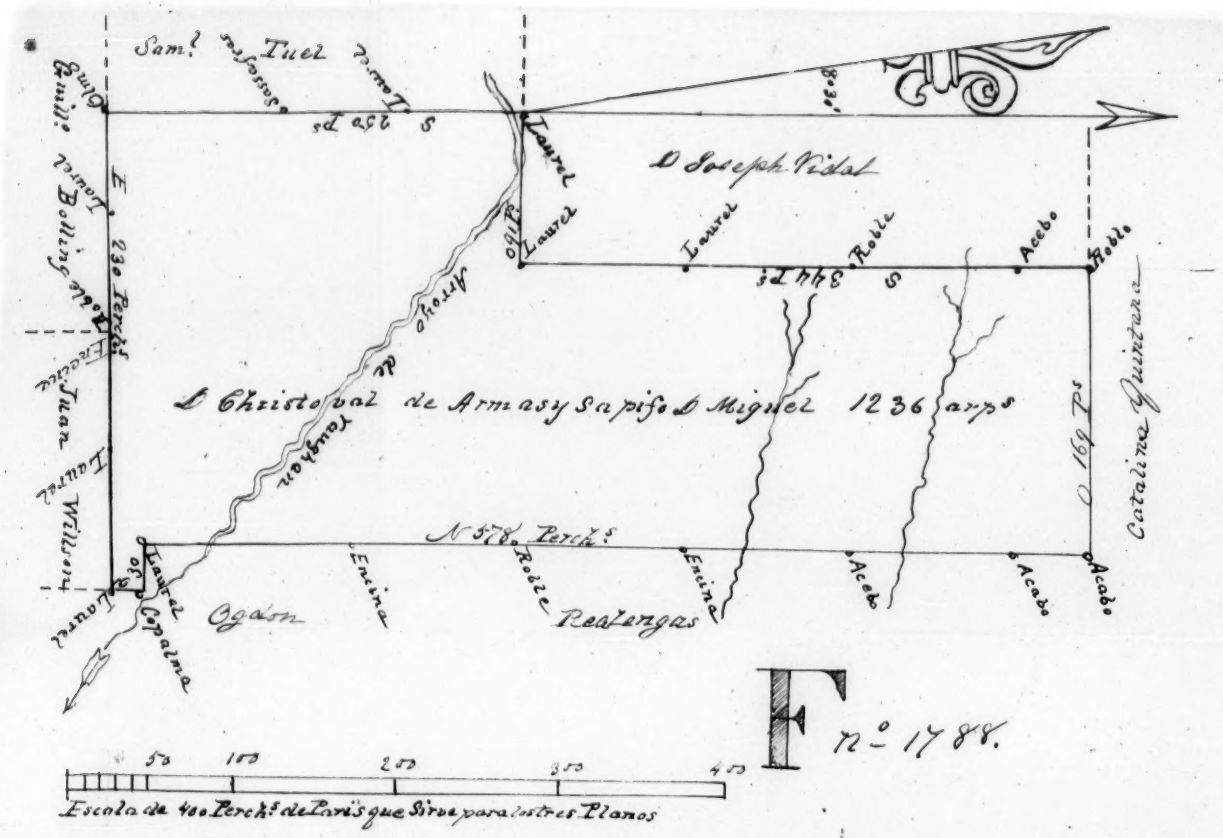
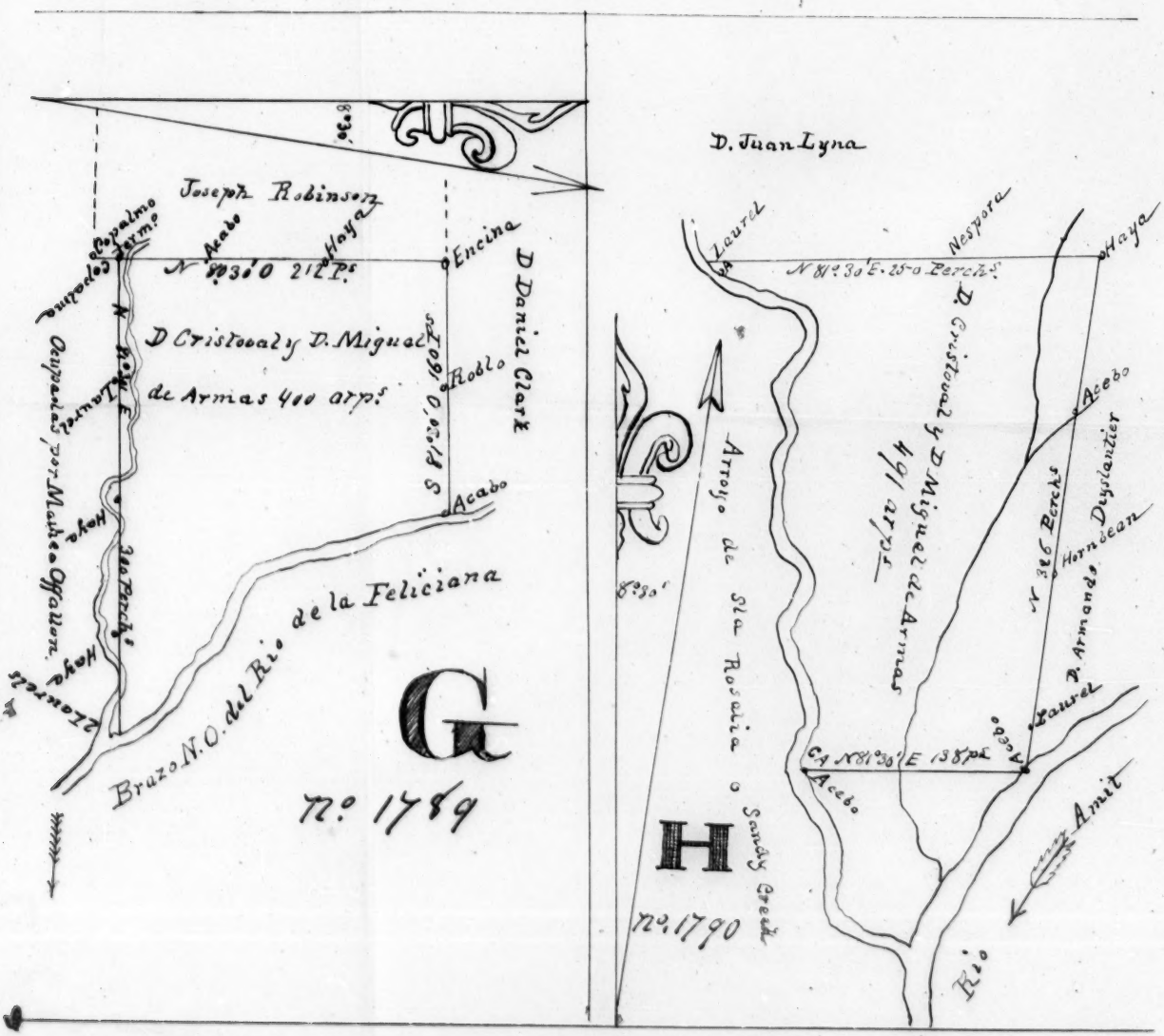
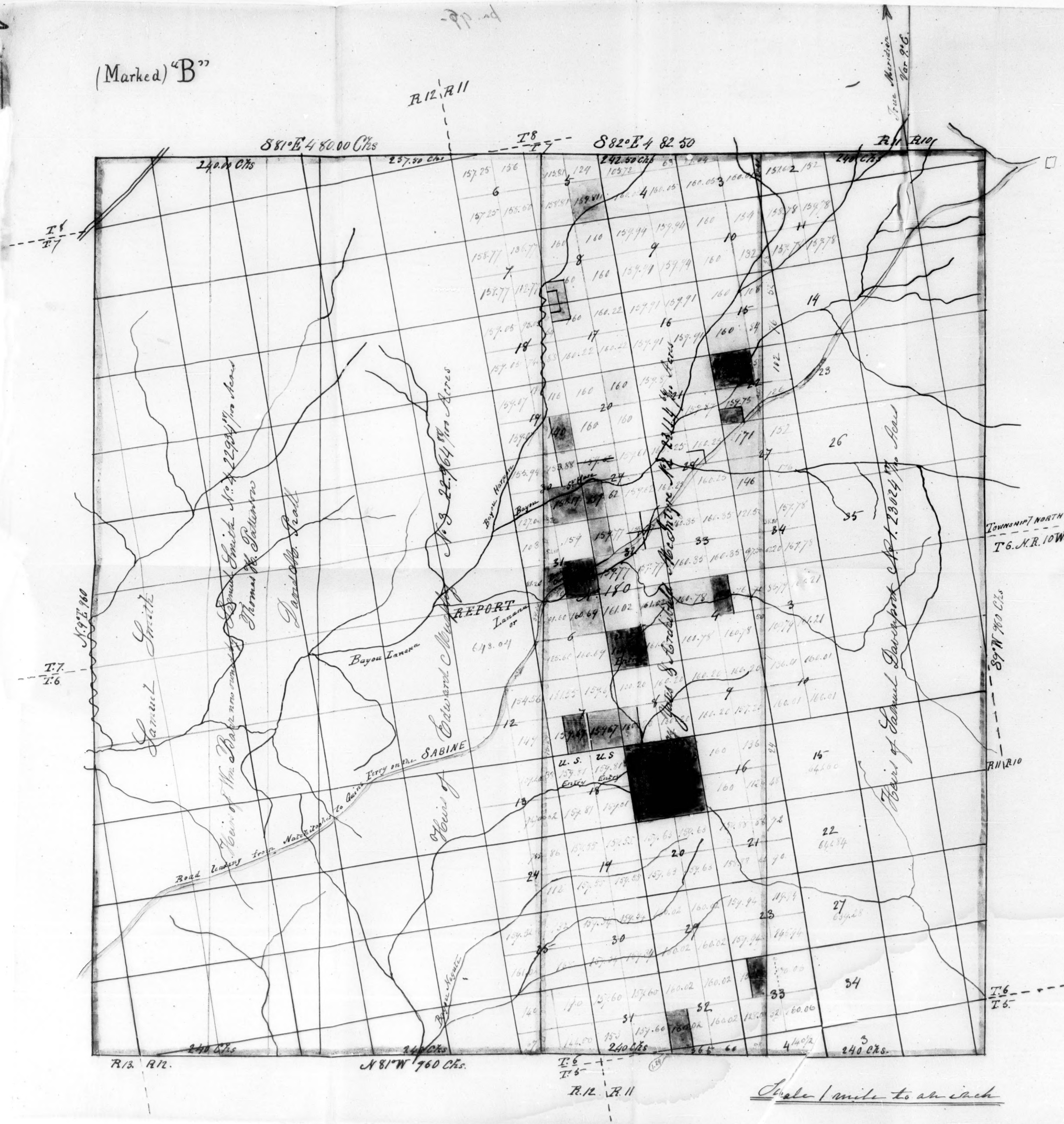
D
Nº 1786


D. Iturabyra
D. Joaquin Estrada Vz
Casco
Solicitadas
Guillem. Kirkland
David Waltman
Arroyo del Bosque Roxo.
Christoval
Acebo
Roble
Palo de Perro
Haya
Encina
Pino
Hacha
Acebuche
Guillermo
Whitaker
D. Joseph Reynes
D. Manuel Garma
D. Juan Leyna
D. Miguel de Armas
N 70° E 345 Ps
N 7° E 345 Ps
S 20° E 138 Ps
N 7° E 29 Perch
S 20° E 138 Ps
N 45° E 138 Ps
N 67° E 30 Ps
N 7° E 402 Ps
S 20° E 173 Ps
8° 30'
50 100 200 300 400
E.
No. 1787
5


Saml Tuel
Laurel
Guillo Bollins
D Joseph Vidal
Laurel
Roble
Acebo
Robles
Arroyo de Tuakan
D Christoval de Armas y Sapifo D Miguel 1236 arpos
Catalina Guinarra
Juan Laurel Williams
Laurel
Encina
Robles
Encina
Acebo
Acebo
Acebo
Laurel
Copalma
Ogdon
Realengas
F
Nº 1788.
50 100 200 300 400
Escala de 400 Percks de Paris que Sirve para los tres Planos


Joseph Robinson
Copalmo
Acabo
Haya
Encina
D Daniel Clark
D Cristoval y D. Miguel de Armas 400 arps
Robles
Laurel
Acabo
Brazo N.O. del Rio de la Feliciana
G
Nº 1789
D. Juan Lyna
Laurel
Nespora
Haya
D Cristoval y D Miguel de Armas 400 arps
Acebo
Arroyo de la Rosalia o Sandy Creek
H
Nº 1790
Laurel
Acebo
Rio
Amit

(Marked) "B"



Scale 1 mile to an inch

Marked "C."

T 11 L

N 15° W 1463/100 Chains

T 10 L

R 11 / R 12

R 13 / R 12

Heirs of Wm Barr, No 4 229.34 84/100 Acres

No 3

Heirs of Edward Hamilton

Thomas Patterson

David Smith

Samuel Smith

Yates No 2

Heirs of Edward Hamilton

Chas Hamilton

No 1

Heirs of Daniel Grayson

Bayou Sabine

Bayou Sabine

Bayou Sabine

Real Dominio

SUR 504 Ap

Real Dominio

OESTE 504 Ap

ESTE 504 Ap.

Encinal

Llano

Fuente

Piedras

Camino

Arroyo

Llano de las Ormigas

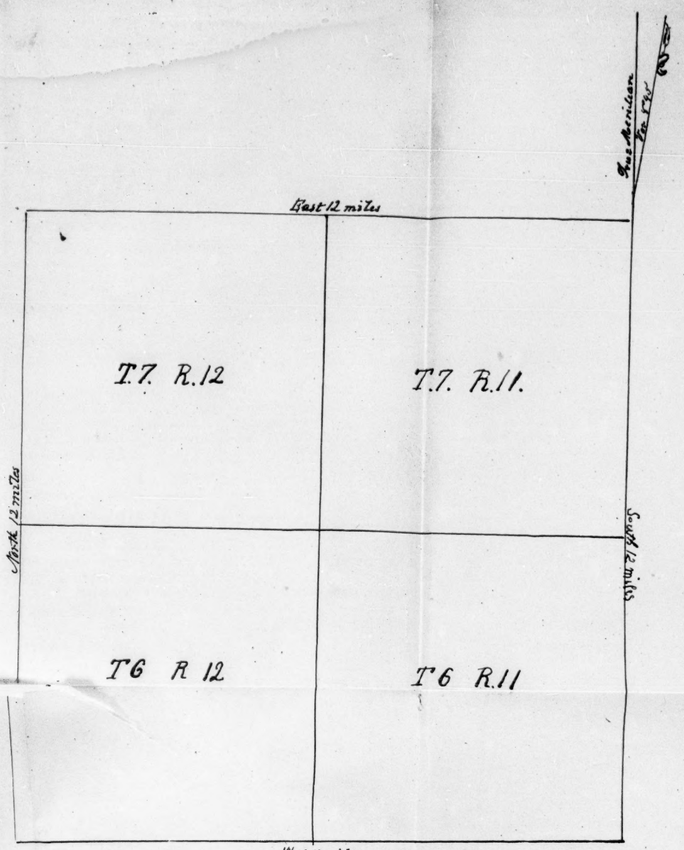
62 Ap.

36 Ap.

196 Ap.

R I O S A B I N A S

No. 4



Scale of 2 miles to an Inch.

The above plat represents the Situations of the Lananna tract, Comprising Townships 6 & 7 Rs 11 & 12 West Districts South of Red River La

Examined Dec.r 28th 1838.

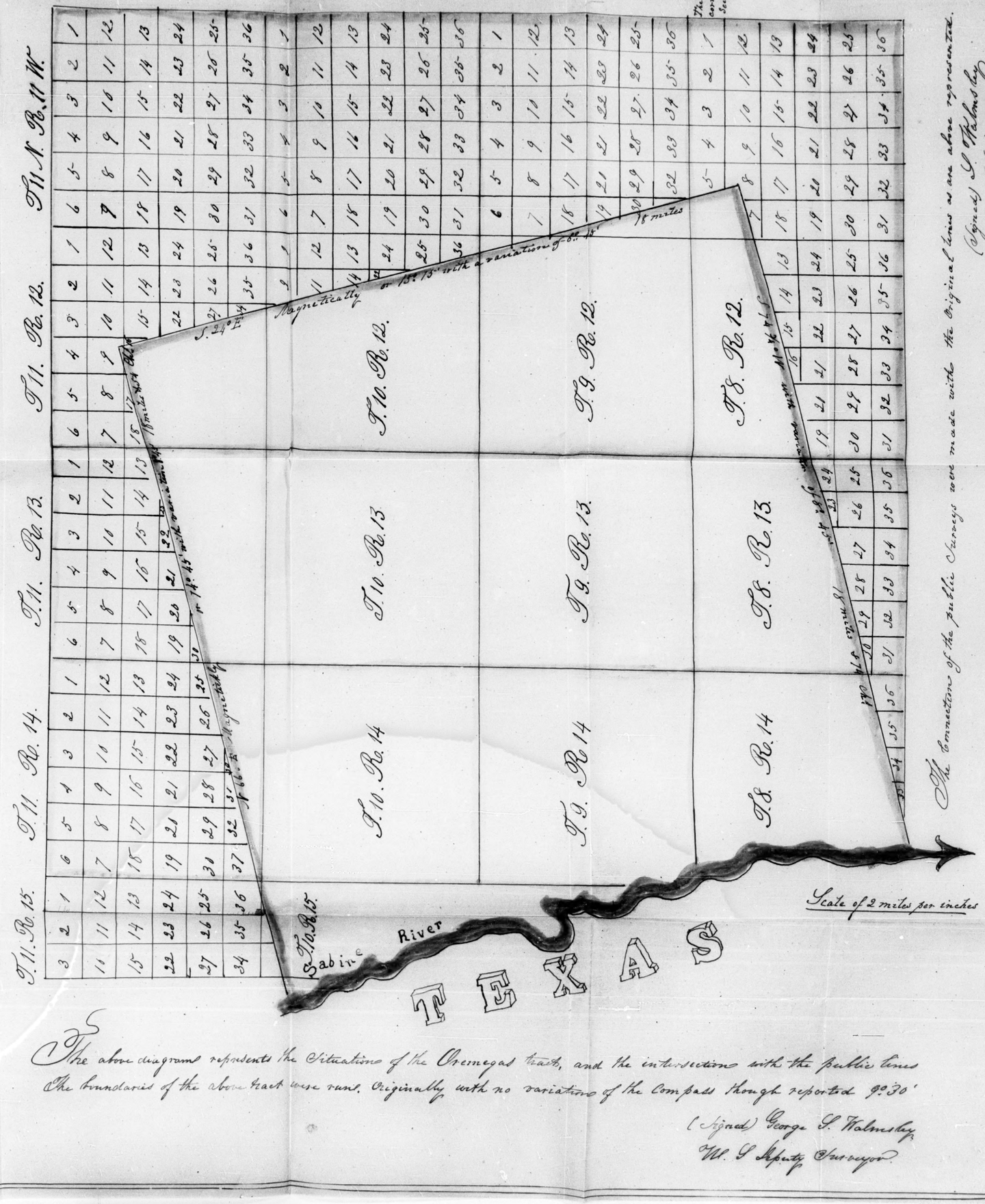
Signed George S. Walmsley
W. S. Deputy Surveyor.

Note

The above was ascertained by finding the center being corner to Townships 6 & 7 Ranges 11 & 12

(Signed) George S. Walmsley
Deputy Surveyor

No 3.

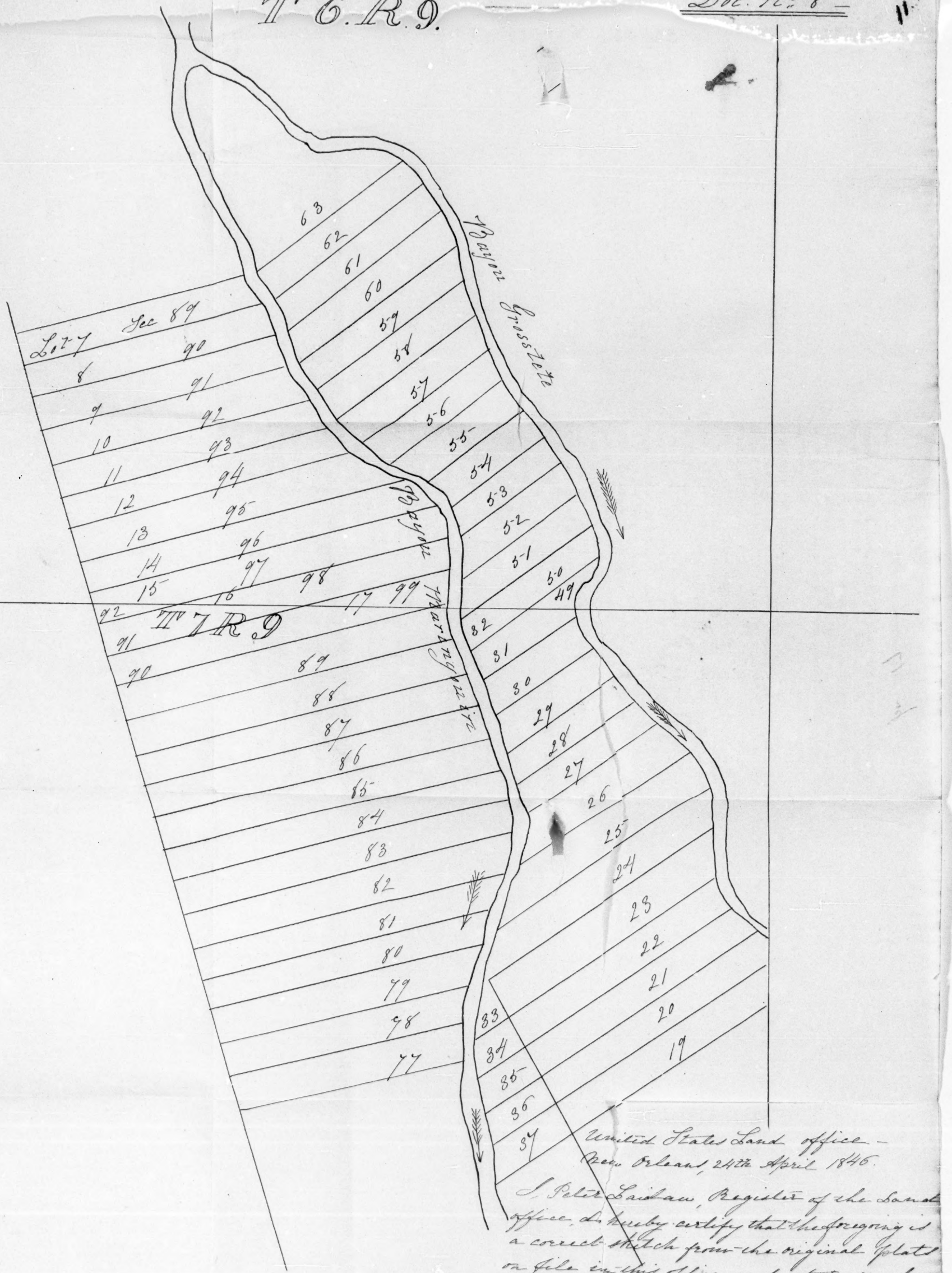


Scale of 2 miles per inches

The above diagrams represents the Situations of the Oremegas tract, and the intersections with the public lines The boundaries of the above tract were run. Originally with no variations of the Compass though reported 9° 30'

(Signed) George S. Walmsley
W. S. Deputy Surveyor

T 6. R. 9. No 151. Doc. No 8



United States Land Office -
New Orleans, 24th April 1846.

I, Peter Laidlaw, Register of the Land Office, do hereby certify that the foregoing is a correct sketch from the original plats on file in this office, and that all the land embraced therein had been sold.

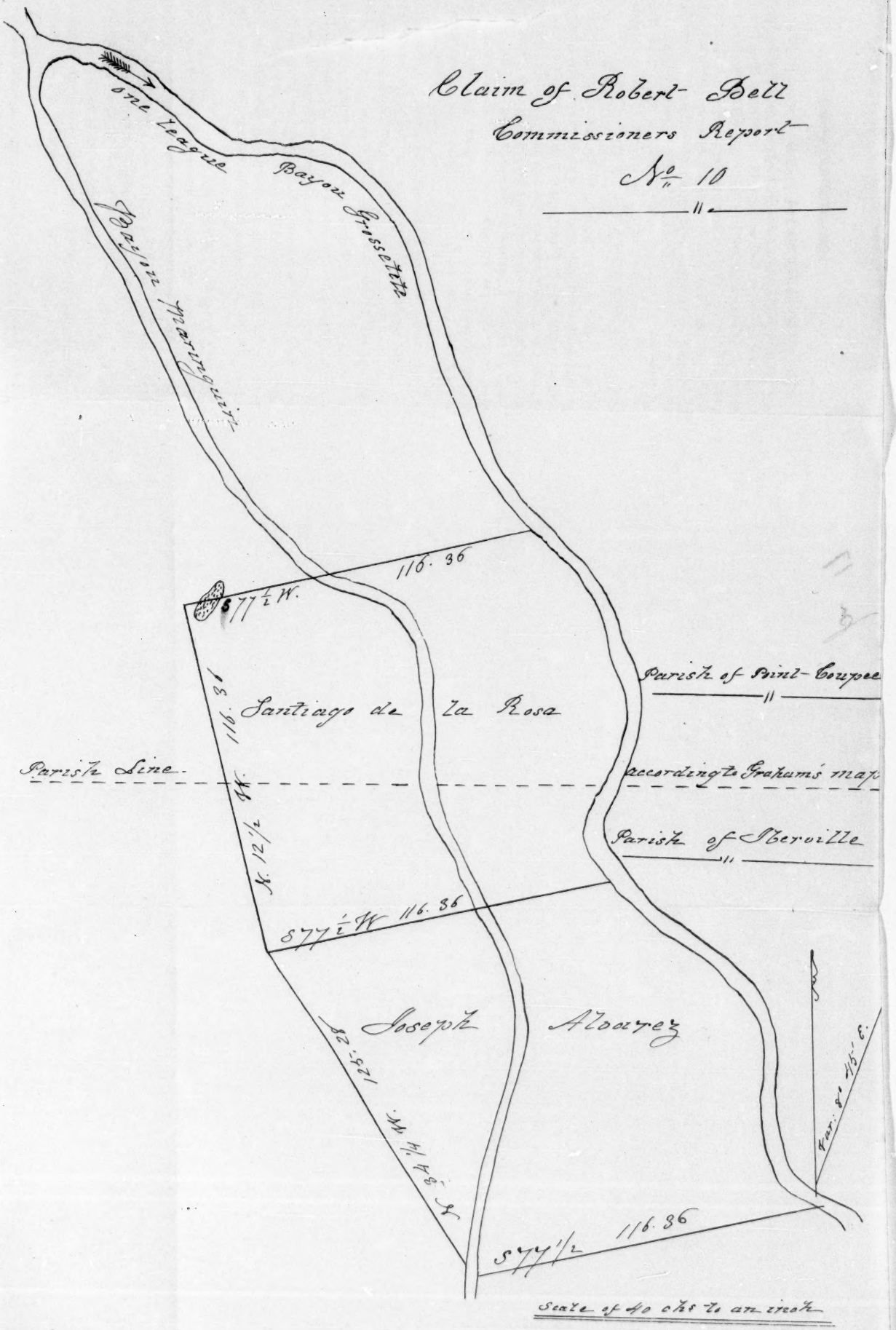
(Signed) - Peter Laidlaw
Register -

No 157 U. S. Sur. Vol. 1

Claim of Robert Bell

Commissioners Report

No 10



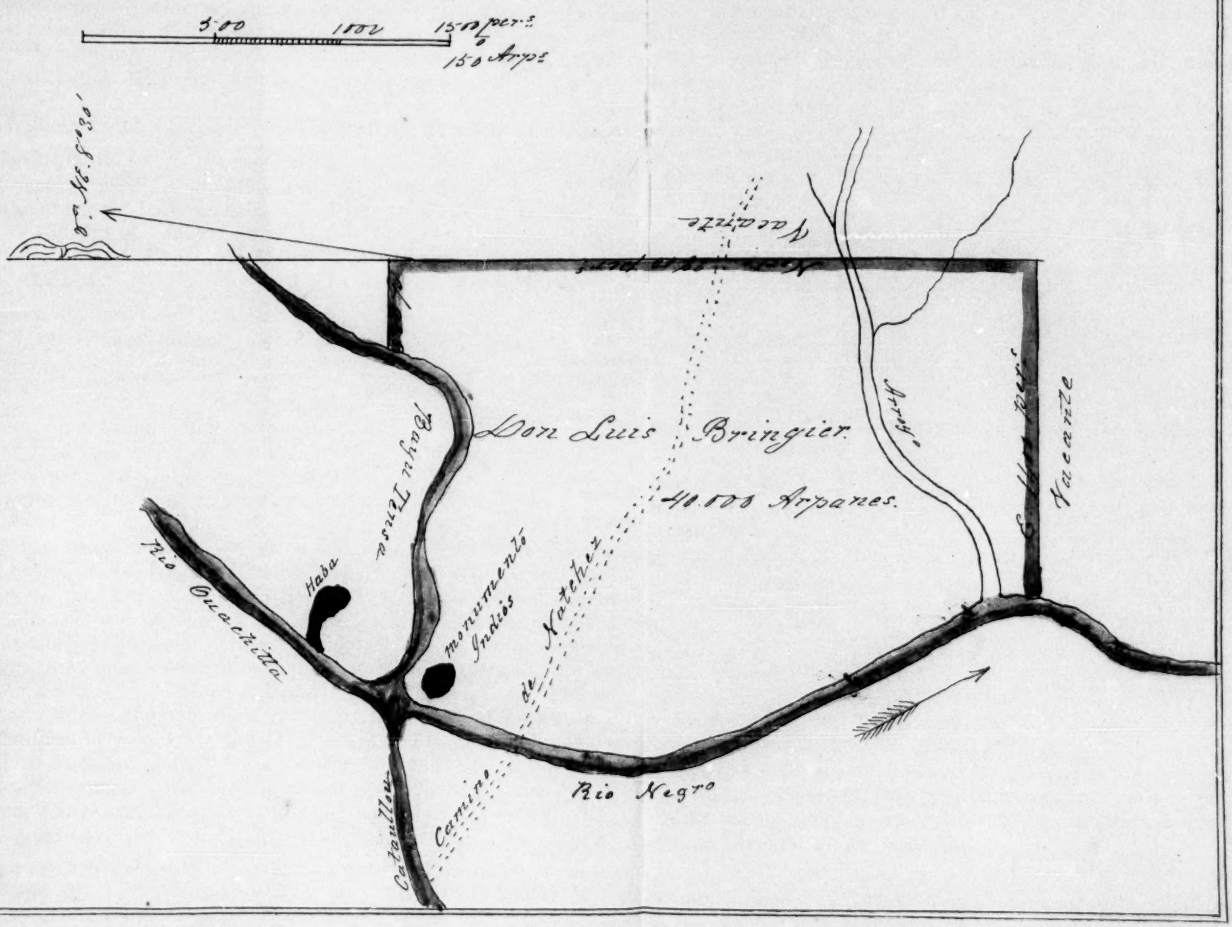
Scale of 40 chs to an inch

13

Nº 160 fsa. 33.

Luisiana, año 1796. Nº 10

Puesto de Ouachitta.



Marked E

T. 8 N. R. 7 E.

T. 7 N. R. 7 E.

T. 7 N. R. 6 E.

T. 6 N. R. 7 E.

T 8 N
R 6 E

T 8 N
R 7 E

T 8 N
R 8 E

T. 7 N.
R. 8 E.

T 6 N
R. 8 E.

BAYOU TENSAS

RIVER

BLACK

Washita R

B Catahoula

Brushy Bayou

BLACK LAKE

BIG BRAKE

Boggy Bayou

Natchez Trace

Bayou

Ross'

COCODRIE LAKE

Cocodrie B.

East 113.50

380 P +

34.66

110.38

S. 54 E.

N 22 E. 84.85

116.36

42.70

West 514.20 Chains.

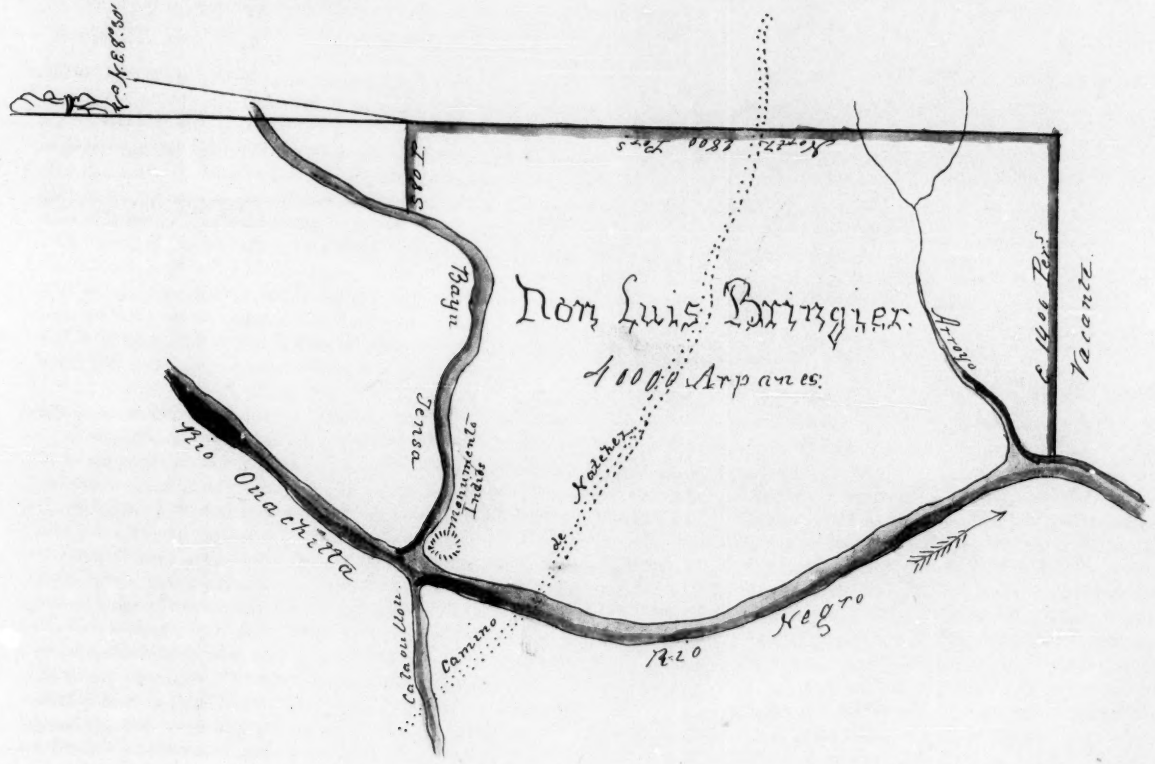
40.20

"C"

N: 160 - pag 81. —

Luisiana año 1796

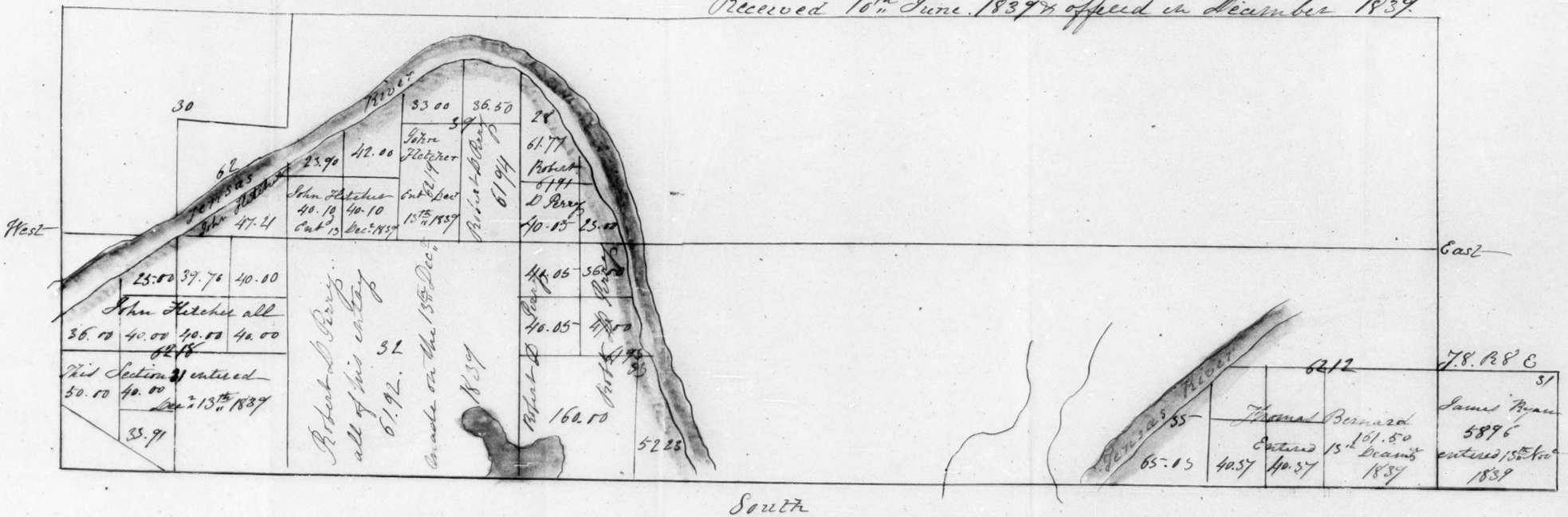
Puesto de Ouachitta



No 160 — page 101.

Part of Township 6 Range 7 East District North of Red River

Received 10th June 1839 & offered in December 1839



Rec.d and filed in office 12th January 1843
Signed Henry O. McEnery. register

Offered pursuant to law and instructions 25th October 1843
Signed Henry O. McEnery. Register

Ouachita River

Texas River

T. 8. R. 6. E

T. 7. R. 6. E

T. 7. R. 7 East District North of Red River

T. 7. R. 8, East District North of Red River

36 Nichols's N°3797

47.00

S 53 E 76.44

John Henry B. F. 1787

S 18 E 49.00

S 18 E 47.36

N 72 E 44.25

× 173

× 166

× 213

× 117

× 212

× 123

× 53

× 118

× 96

× 209

× 91

× 108

× 88

× 210

× 92

× 33

× 148

Texas River

Bayou

Frederick 7932 J. Bowie

Asa A. Hawthorn 7815 Wm. D. Adams 7931

Black River

CYPRESS BRAKE

Black Lake

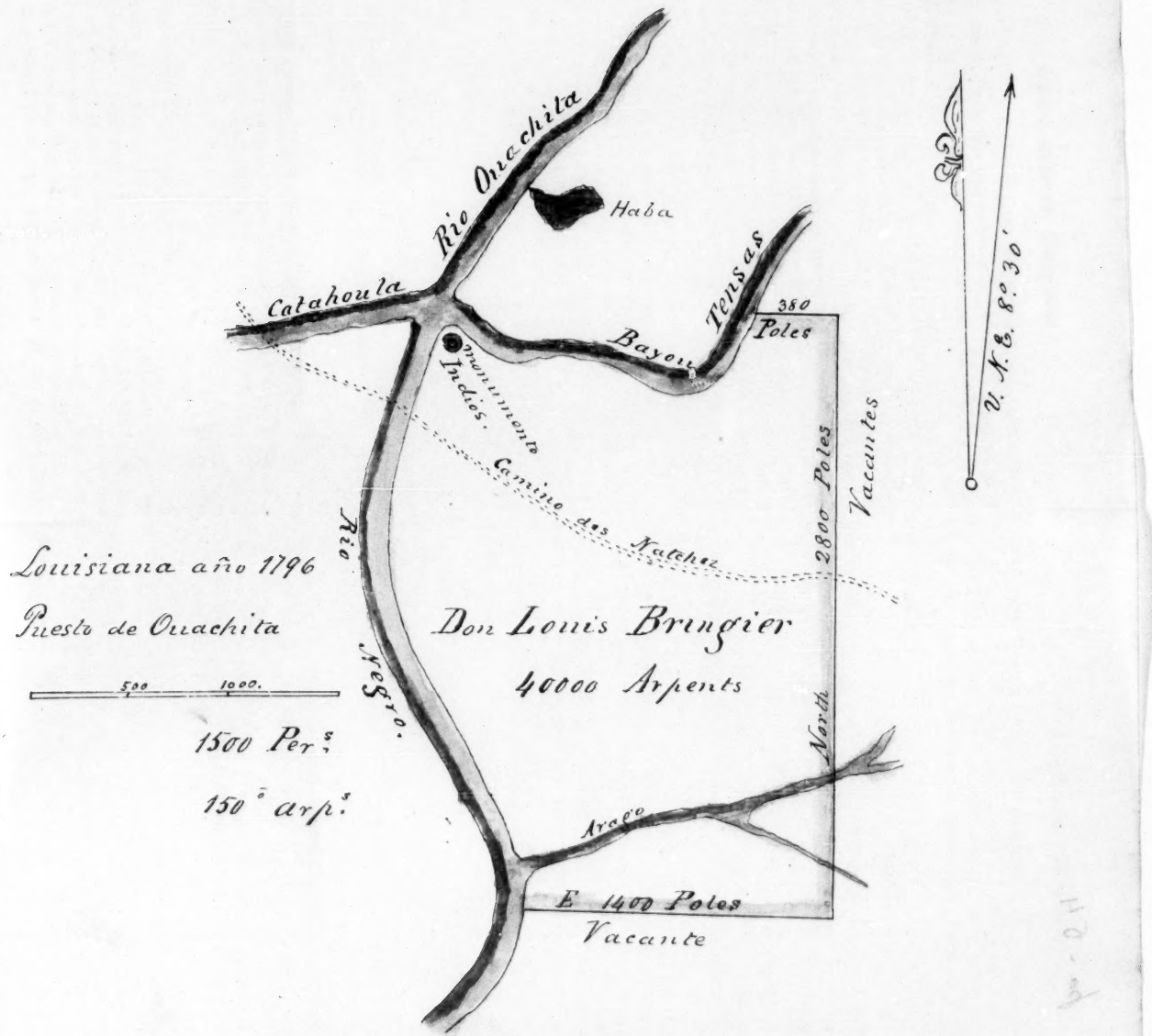
Joseph Tyrea 7934

Richard Smith 7933

Ross Brake

Ross Bayou

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36


Rio Ouachita
Haba
Calahoula
Tensas
380 Poles
Bayou
Indios.
Camino des Natchez
2800 Poles
Vacantes
V. N.E. 8° 30'
Rio Negro.
Louisiana año 1796
Puesto de Ouachita
500 1000.
1500 Pers.
150 arps.
Don Louis Bringier
40000 Arpents
North
Arago
E 1400 Poles
Vacante

No 160 - fn 122.

Marked A No 11

Township 6 Range 8 East District North of Red River La.

North

T6R8E

West

East

South

Seminary Land

Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Seminary Selected 20th May 1840

Heirs of John H. Prater dec'd 7925

Pleasant H. Prater 7924

5 4 3 2 1 6

8 9 10 11 12. 7

17 16 15 14 13 18

19 20 21 22 23 24 19

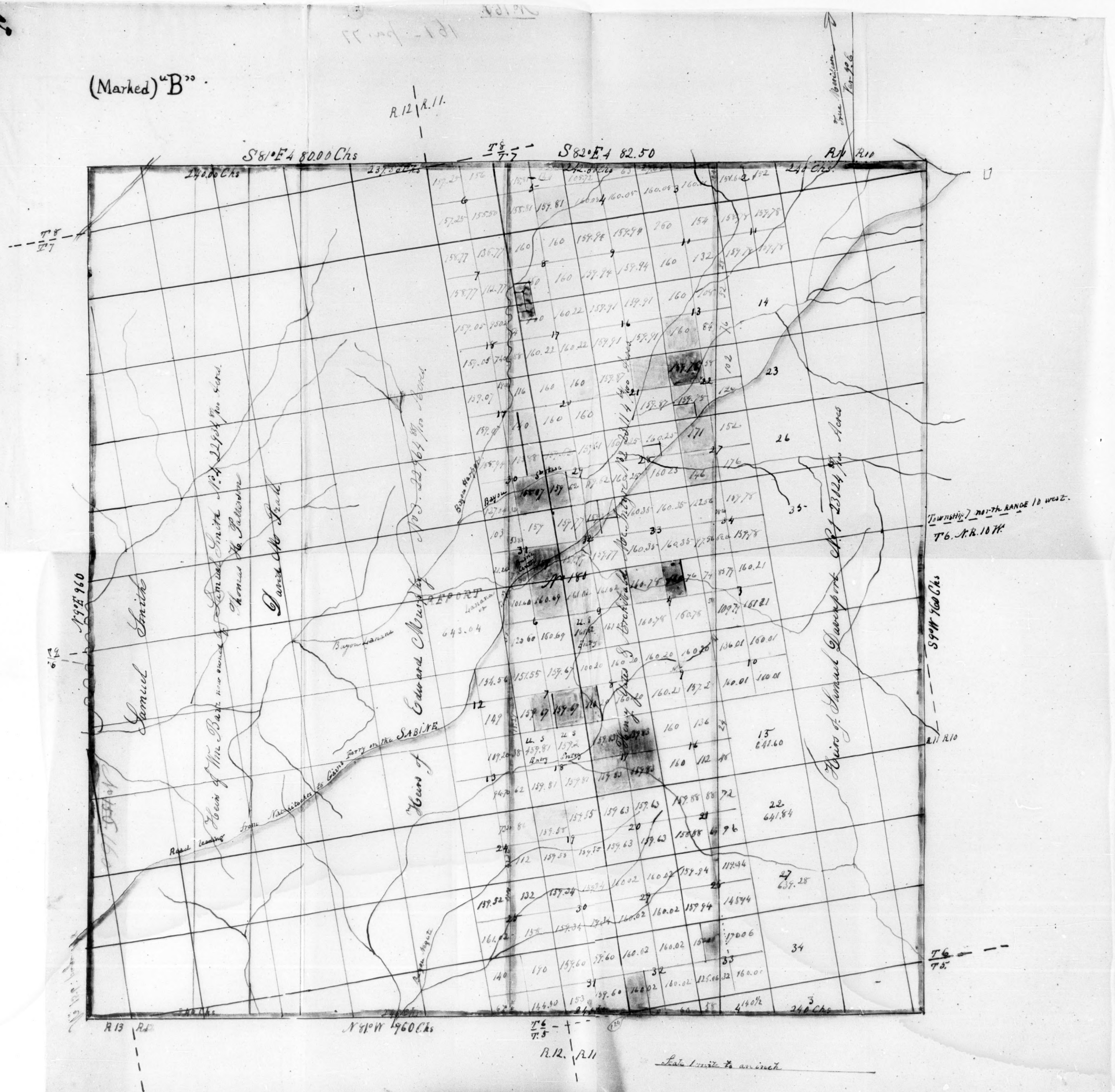
X 59

X 58

X 36

No 160

(Marked) "B".


R. 12 | R. 11.
S 81° E 4 80.00 Chs
S 82° E 4 82.50
T 8 N / T 7 N
R 11 | R 10
240.00 Chs
237.50 Chs
244 Chs.
Township 7 North Range 10 West.
T 6 N. R. 10 W.
Samuel Smith 1/4 Section
Samuel Smith 1/4 Section
Heirs of Wm Bass 1/4 Section
Heirs of Edward Murphy 1/4 Section
Heirs of Samuel Duckworth 1/4 Section
Bayou Lanana
Road leading from Natchitoches to Gains Ferry on the SABINE
Bayou Negreet
S 9 W 160 Chs
N 81° W 160 Chs
T 6 N / T 5 N
R 13 | R 12 | R 11
Scale 1 mile to an inch

T 11 T 10 T 9

R 13 R 12 R 11

Heirs of Wm Barr, No 4 2284 85/100 Acres.

Davis M. Pratt

Thomas H. Patterson

A.T. & S.F. R.R.

Samuel Smith

Head of Edwards Mayfield & Co 3

Reynolds No 11

Henry Yates

Wm Edgar

Wm Edgar

Bayou Natchitoch

Bayou Samuel

Bayou St. Patrick

Samuel Davenport

Heirs

Variation of the Needle 9° E

True Meridian

SABINE RIVER

Scale of 1 Mile to an Inch

Real Dominio SUR 504 Ar

Real Dominio ESTE 504 AP

Real Dominio OESTE 504 Ar

Encinal

Llano

Fuente

Piedras

Fuente de las

Arroyo de

Camino de

Camino

Llano de Los Amigos

Fuente

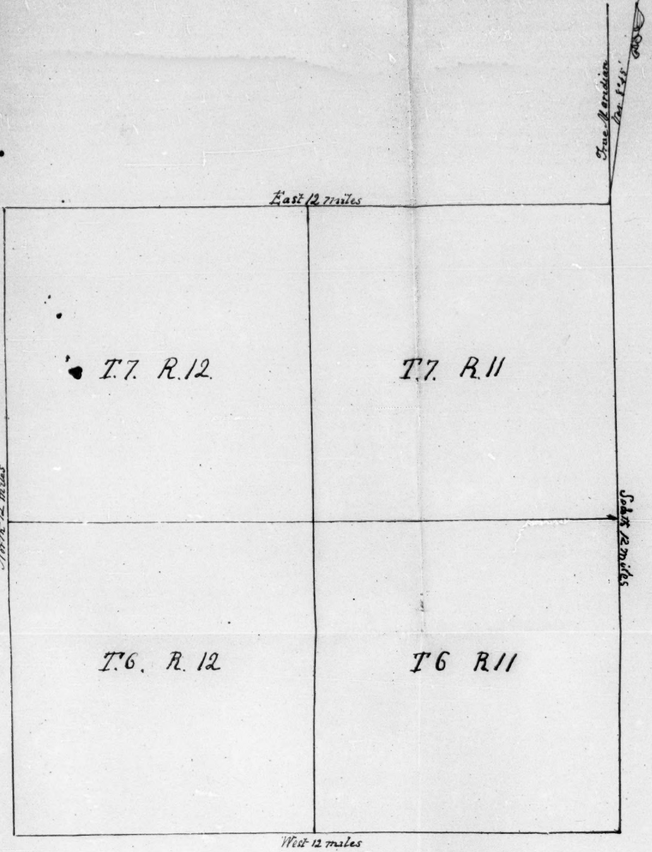
S A B I N A S

62 AP

035 AP

106 AP

No 4



Scale of 2 miles to an Inch.

The above plat represents the Situation of the Lananna tract
Comprising Townships 6 & 7 Rs. 11 & 12 West Districts
South of Red River La
Examined Dec.r 28th 1838.

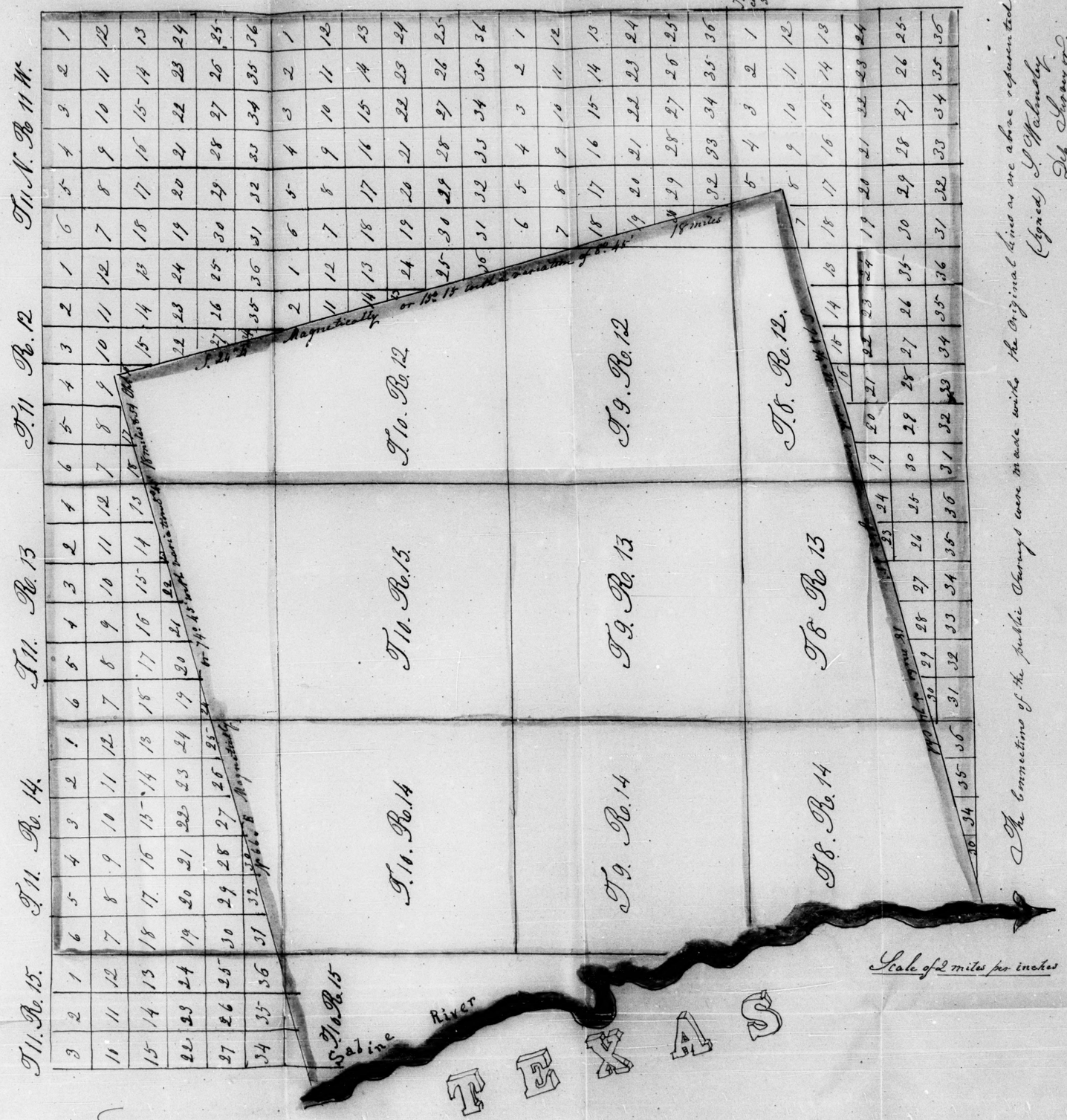
Signed George L. Walmsley,
U. S. Deputy Surveyor.

Note

The above was ascertained by finding the
center, being corner to Townships 6 & 7. Ranges 11 & 12.

Signed George L. Walmsley,
Deputy Surveyor.

No. 3.



Scale of 2 miles per inches

The above diagram represents the Situation of the Orcenegas tract and the intersections with the public lines.
The boundaries of the above tract were run originally with no variation of the compass though reported 9°30'

January 4th 1839.

(Signed) George L. Walmsley
U. S. Deputy Surveyor

The Connections of the public Surveys were made with the Original Lines as are above represented

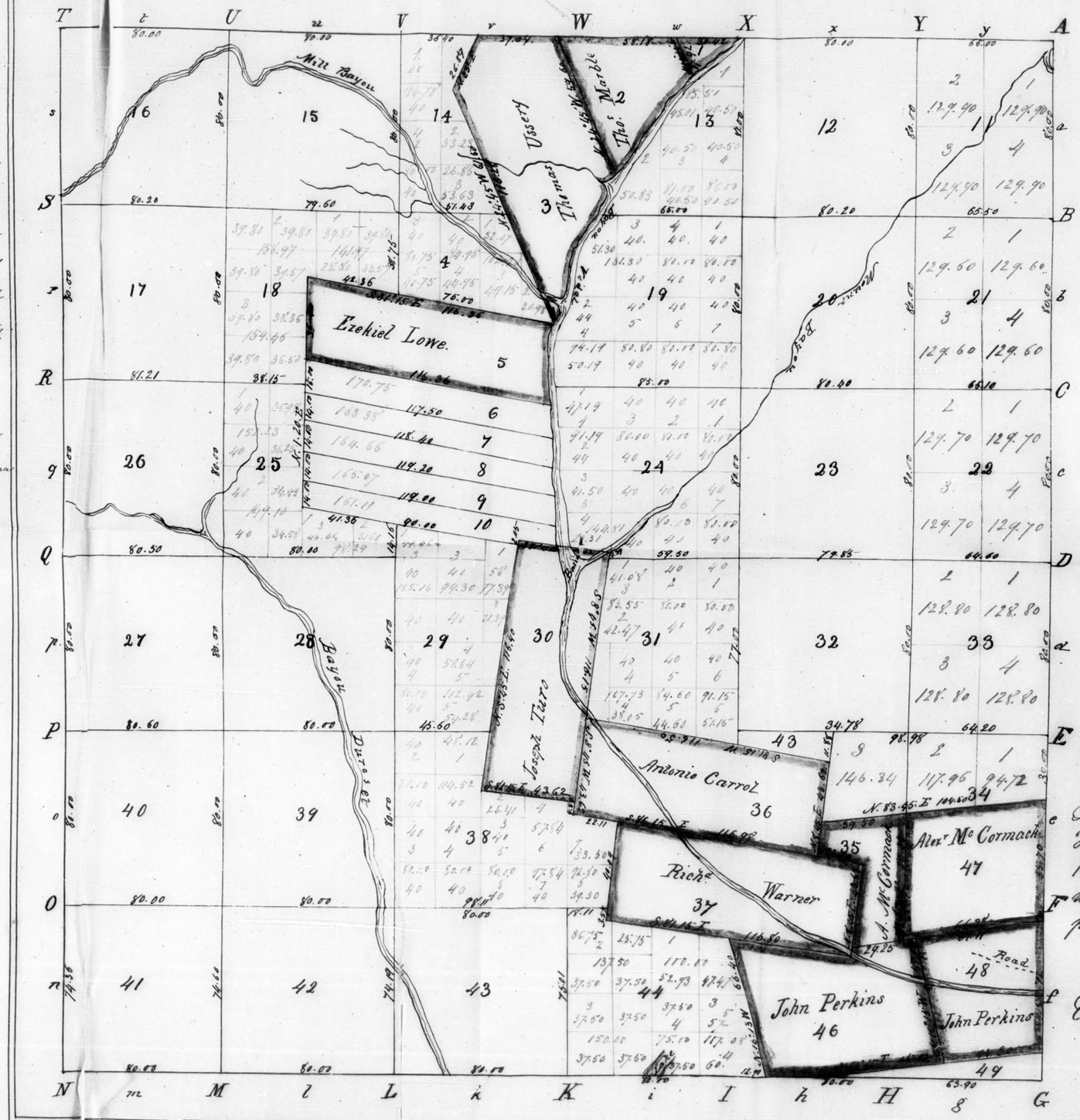
(Signed) G. L. Walmsley
Dep. Surveyor.

23

No 162 Perkins page 212

Town ... ict.

T, XIV, R, XII, E, LOUISIANA



Sugars Turner

I the undersigned Mayor of the Town of Natchez do hereby certify that the said witness Sugars Turner has examined the said map in my presence and placed his signature hereto on this the 4th day of June 1845 in the Town of Natchez state of Louisiana

J. R. Niles Mayor

Table of Contents.

Sec.	Area	Sec.	Area	Sec.	Area
4	267.90	18	455.40	32	638.80
6	170.75	19	625.49	33	515.20
7	163.38	20	642.40	34	559.02
8	164.66	21	518.40	38	625.17
9	165.07	22	518.80	39	640.80
10	161.11	23	641.60	40	642.40
11	519.62	24	636.41	41	547.84
12	645.81	25	379.47	42	595.15
13	298.36	26	642.84	43	596.80
14	291.64	27	644.40	44	579.58
15	638.40	28	640.00	45	42.81
16	640.80	29	676.77	49	65.60
17	641.64	31	527.03		
	4770.14		7348.41		3897.78
					7348.41
					4770.14
				Total Area	18.016.33

Claimants names	Sec	Sof. Certif	Area
E. Marble	1	B 1500	22.40
Thomas Marble	2	B 1505	221.48
James Ussrey	3	B 1507	528.80
Ezekiel Lowe	5	B 131	423.14
Joseph Turo	30	Rep.d 218	507.75
A. Mc. Cormack	35	Prem.	138.85
Antonio Carrol	36	B 47	507.75
Richard Warner	37	Rep.d 233	507.75
John Perkins	46	Pre	489.00
Alexr. Mc Cormack	47	Rep.d 143	361.45
John Perkins	48	B 281	301.60

The whole of this Township was surveyed by Hugh Currie Deputy Surveyor in June 1830 Except the East Boundary which was Surveyed by Mc. Phaill & Currie Deputy Surveyors. in Janr. 1829

Surveyor's Office Washington (Missi) February 21. 1831

Examined and approved

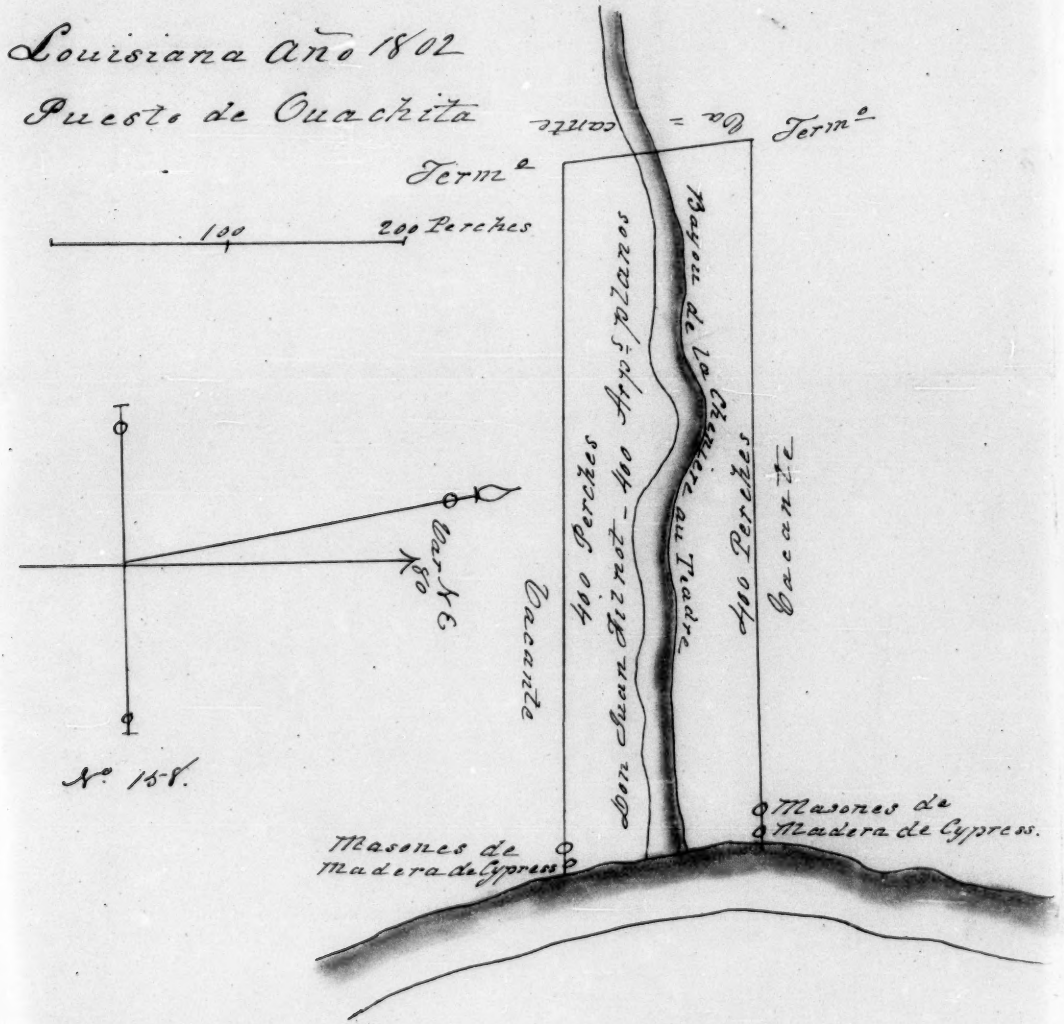
Signed Jo. Runbar Surv.r P. Lands S. of Tennessee

No. 158.

Plat annexed

Louisiana Año 1802

Puesto de Ouachita



Town of Monroe

Fort Miro

T. 17 R. 2. E

T. 17 R. 3 E

T. 17 R. 4. E

T. 16 R 2 E

T. 16 R 3 E

T. 16 R 4 E

T. 15 R 2 E

T. 15 R 3 E

T. 15 R. 4 E

T. 14 R. 2 E

T. 14 R 3 E

T. 14 R 4. E

T. 13 R 2. E

T. 13 R. 3. E

T. 13 R 4 E

T. 12 R 2 E

T. 12 R 3. E

T. 12 R. 4. E

T. 12 R. 5. E

T. 11 R. 2. E

T. 11 R. 3. E

T. 11 R. 4. E

Bayou Cheniere au Tonnere

Ouachita River

Bayou Bella chemiere

Bayou Bella chemiere

Bayou Columet

A

B

C

D

E

F

G

H

I

K

L

M

N

O

P

Q

R

1 N. 81 1/2 W. 56 chs

1 3M. 950 chs

2 4M. 22.54 chs

3 2M. 1975 chs

4 3M. 45 chs

5 2M. 77 chs

6 3M. 14 chs

7 3M. 150 chs

8 1M. 53 chs

9 2M. 1375 chs

10 2M. 18 chs

11

12 6M. 50 chs

13 4M. 33.50 chs

14 3M. 72 chs

15 3M. 12.50 chs

16

17 4M. 64 chs

17 3M. 79 chs.

18

18 3M

19 5M. 75.50 chs.

19 2M. 65.50 chs

20 5M 5.50 chs

20 3M 67.65 chs

21

21 4M. 3.50 chs.

22 5M. 12 chs

22 3M. 62. chs.

23 5M. 31 chs

23 3M 5 chs

24 6M. 31 chs

24 1M. 60 chs

25 6M. 15.50 chs

25 1M 24 chs

26 6M. 30. chs

27

28

29

30 5M 76 chs

31 6M. 57.50 chs

32

33 6M 32.50 chs.

N. 81 E.

N. 21. E

N. 55° E 29 chs

N 53 W 47.50 chs.

N 18° W 178.50 chs.

S 47 E 570 60 chs

S 53° W 196 chs.

S 51° W 206 3/4 chs.

S 58° W 418 chs. S. M. 18 chs

S 53 E 1149.50 chs. or 14 M. 69.50 chains

S 43 E 23 chs. or 9 M 15 chs.

N 53 W 47.50 chs. or 9 M. 34.50 chs.

N 21 E 54 chs 26

N 53 W 47.50 chs. S. M. 30 chs.

13 M. 38.50 chs.

9 M. 34.50 chs.

3

Scale of 80 Chains = 1 Inch.

Surveyor General's Office
Washington, June 20 1823

Let the courses of the original lines, established and run by the Surveyors, be represented upon the Plat of Township No. 2 South of the Base line and 2 East of the Meridian, and the Contents of the fractional Sections, and Lots bordering upon the Rivers and Lakes, returned in the Field Notes of the Survey of the said Township, made by Deputy Surveyor

Thomas Hughes

Chain 4. d. Grant to Robert Dunn, 1 Sept 25 Links on the East Side of the Line between Sections 15 & 16 of the 2nd Township 3 Range East of the Meridian, and running thence North 3 Degrees West 20 Chains 50 Links to a Stake, thence North 87 Degrees East 10 Chains to a Stake, thence South 3 Degrees East 20 Chains 50 Links to a Stake, thence South 87 Degrees West 10 Chains to the Place of Beginning, containing 20 Acres and 25 Hundredths of an Acre of Land, be the same more or less.

" B. A Grant to Jonathan Moore, of 160 Acres of Land, being the West half of the South East Quarter of Section No. 33 in the 2nd Township 4 North of the Base Line and 3 East of the Meridian.

" C. A Grant to Peter Dunn, of 160 Acres of Land, being the East half of the South East Quarter of Section No. 33 in the 2nd Township 4 North of the Base Line and 3 East of the Meridian.

" D. A Grant to Thomas Wilson, of 160 Acres of Land, being the West half of the South West Quarter of Section No. 34 in the 2nd Township 4 North of the Base Line and 3 East of the Meridian.

" E. A Grant to Thomas Moore, of 160 Acres of Land, being the East half of the South West Quarter of Section No. 34 in the 2nd Township 4 North of the Base Line and 3 East of the Meridian.

" F. A Grant to Peter Dunn, of 160 Acres of Land, being the East half of the North West Quarter of Section No. 3 in the 2nd Township 3 North of the Base Line and 3 East of the Meridian.

" G. A Grant to Peter Dunn, of 160 Acres of Land, being the West half of the North West Quarter of Section No. 3 in the 2nd Township 3 North of the Base Line and 3 East of the Meridian.

" H. A Grant to Peter Dunn, of 160 Acres of Land, being the East half of the North West Quarter of Section No. 3 in the 2nd Township 3 North of the Base Line and 3 East of the Meridian.

" I. A Grant to Peter Dunn, of 160 Acres of Land, being the West half of the North East Quarter of Section No. 3 in the 2nd Township 3 North of the Base Line and 3 East of the Meridian.

" K. A Grant to Thomas Wilson, of 160 Acres of Land, being the East half of the North East Quarter of Section No. 3 in the 2nd Township 3 North of the Base Line and 3 East of the Meridian.

Table of Contents

Names of Claimants	Sec.	Quar.	Area.
Thomas Bayley and Thomas Moore, Tenants in Common	34	B 16	320.47
T. B. Bayley, one of the Tenants in Common	35	B 16	160
Stephen Bayley, do. do.	46	B 16	1220.81
Thomas Bayley, do. do.	41	B 16	160
Thomas Bayley and Stephen Bayley, Tenants in Common	42	B 16	89.49
Thomas Bayley, do. do.	43	B 16	1661.07
Joseph R. Bayley, Executor of Thomas Bayley deceased			149.40

Chains 6,000.00
Deduct the Claims 2,000.00
Remains 4,000.00

Scale of 80 Chains = 1 Inch.

Surveyor General's Office
Washington, June 20 1823

Let the courses of the original lines, established and run by the Surveyors, be represented upon the Plat of Township No. 2 South of the Base line and 2 East of the Meridian, and the Contents of the fractional Sections, and Lots bordering upon the Rivers and Lakes, returned in the Field Notes of the Survey of the said Township, made by Deputy Surveyor

Thomas Hughes

Claim of the Marquis de Tracy in the District North of Red River La.

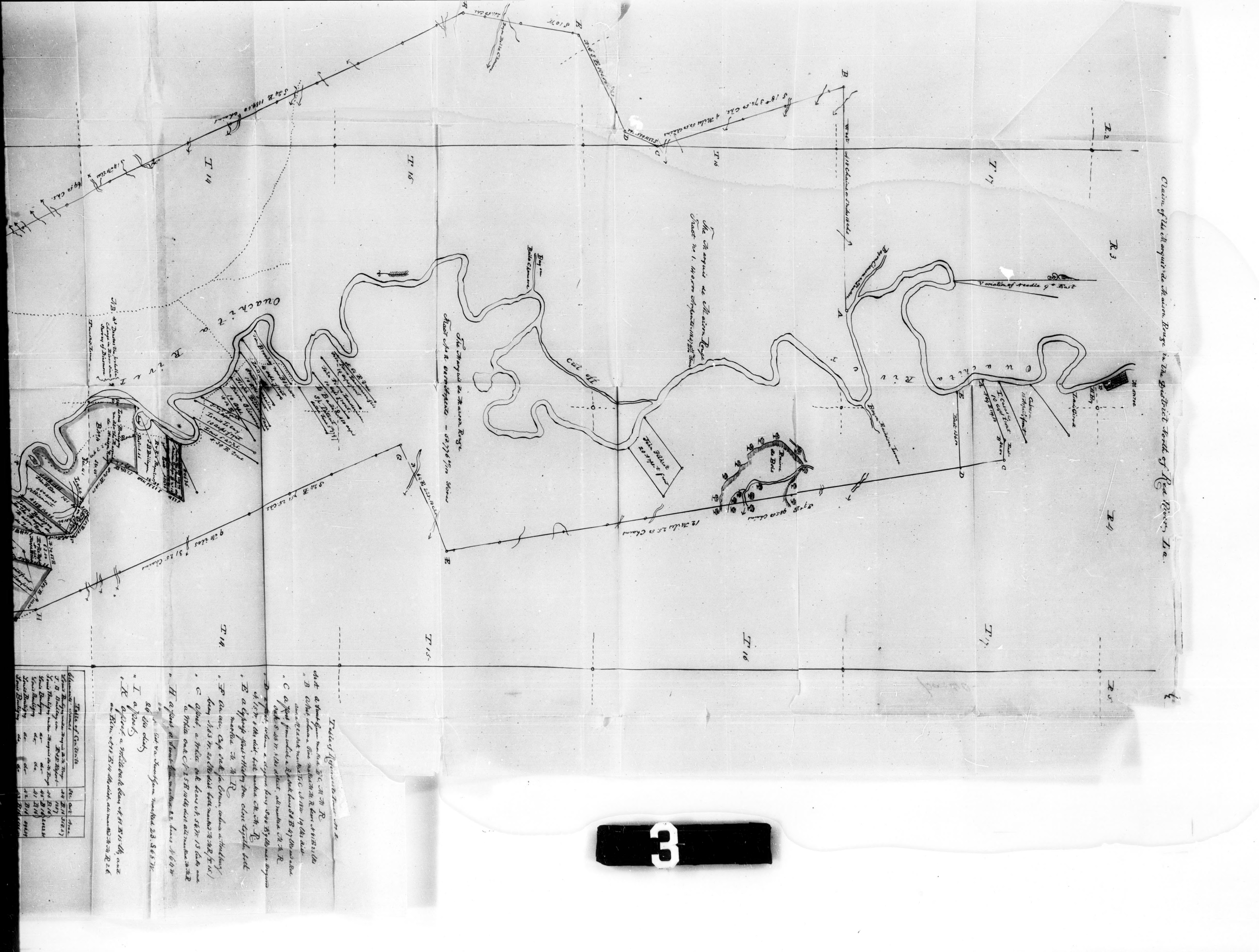


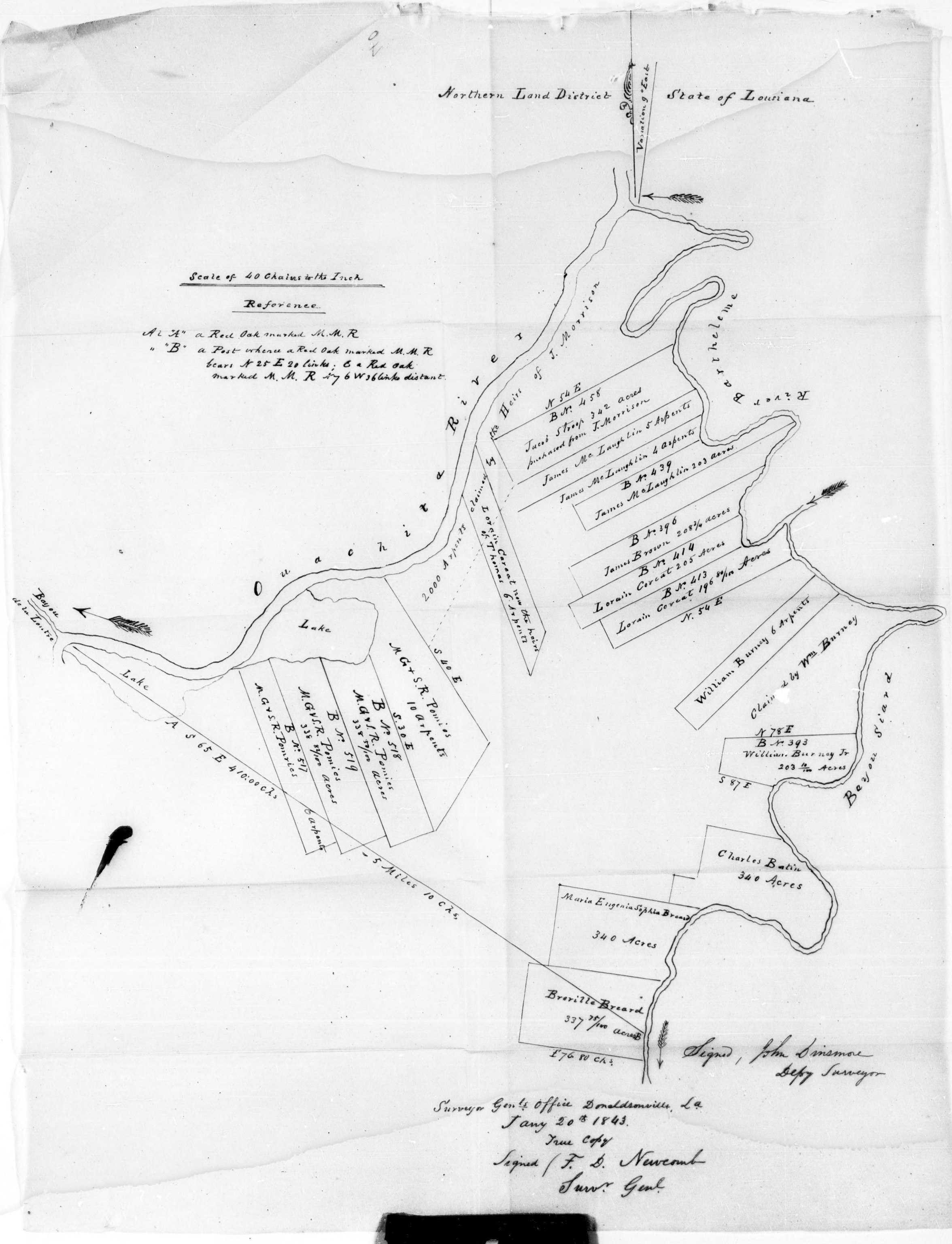
Table of Referenced Trees &c.
Ouachita
Red River
Bayou Huddleston
Bayou Dauphin
Bayou Bodcau
Bayou Bodcau Chenier
Bayou Dorcheat
Bayou Dorcheat Chenier
Bayou Bodcau Chenier
Bayou Huddleston Chenier
Bayou Dauphin Chenier
Bayou Dauphin
Bayou Huddleston
Bayou Bodcau

Northern Land District State of Louisiana

Scale of 40 Chains to the Inch

Reference

At "A" a Red Oak marked M.M.R
" "B" a Post whence a Red Oak marked M.M.R bears N 25 E 20 links; & a Red Oak marked M.M.R dry 6 W 36 links distant.



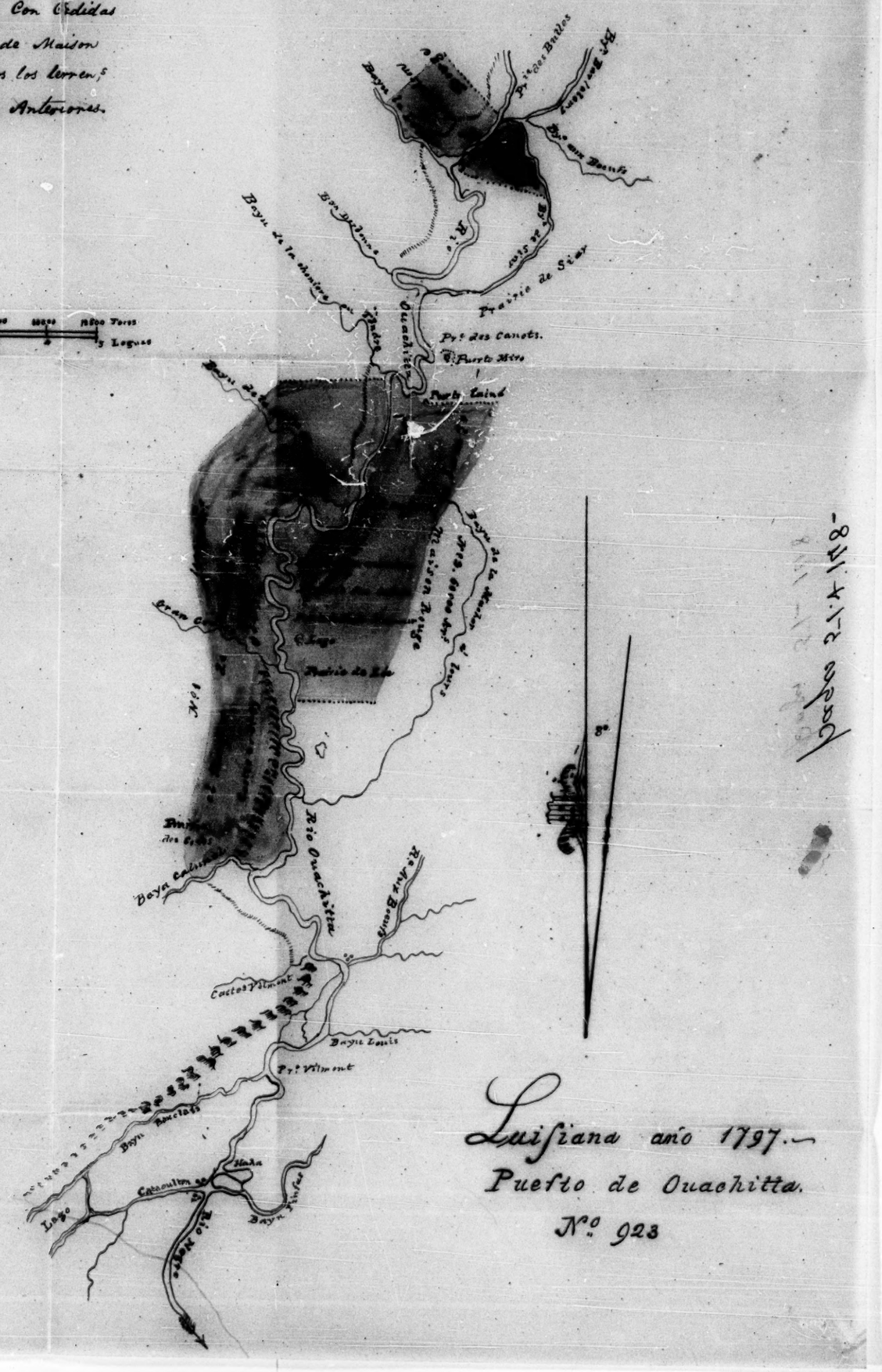
Signed, John Sinsmore
Depy Surveyor

Surveyor Gen.ls Office Donaldsonville, La.
Jany 20th 1843.
True Copy
Signed / F. D. Newcomb
Surv.r Gen.l

Referred to in the Report
No. 16. County of Washita.

Plano.—

Figuralino, de los Treinta leguas Planas de tierras, Con Cedidas al Señor Marques de Maison Rouge; No. Incluidos los terrenos Ocupados Con titulos Anteriores.



Luisiana año 1797.—
Puesto de Ouachitta.
No. 923

Case 2-1-1848

N. 94

U. States
vs
King & Cope

Between pages 25-1 & 25-2

Township No. 17, Range 3 East | Township No. 17, Range 4 East

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Part of Maison Rouge's Grant

Township	Range	Acres	Hundredths
In 17	3 East	1373	83
In 17	4 East	6156	90
All 16	3 East	2004	90
All 15	3 East	2102	87
In 16	4 East	1065	59
In 15	4 East	1197	78
	Total	71249	09

Township No. 16, Range 2 East | Township No. 16 Range 3 East | Township No. 16, Range 4 East

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Township No. 15, Range 2 East | Township No. 15, Range 3 East | Township No. 15, Range 4 East

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Township No. 14, Range 2 East | Township No. 14. Range 3 East | Township No. 14 Range 4 East

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Township No. 13. Range 2 East | Township No. 13. Range 3 East | Township No. 13. Range 4 East | Township No. 13. Range 5 East

Township No. 12. Range 3 East | Township No. 12. Range 4 East | Township No. 12 Range 5 East

Ouachita River

Ouachita River

Ouachita River

Ouachita River

Maison Rouge Grant

No. 53

No. 54

No. 55

No. 56

J. Fitzhugh No.

W. Lafayette No.

S. 24° East, true, or S. 33° East, Magnetic Course

S. 34° East.

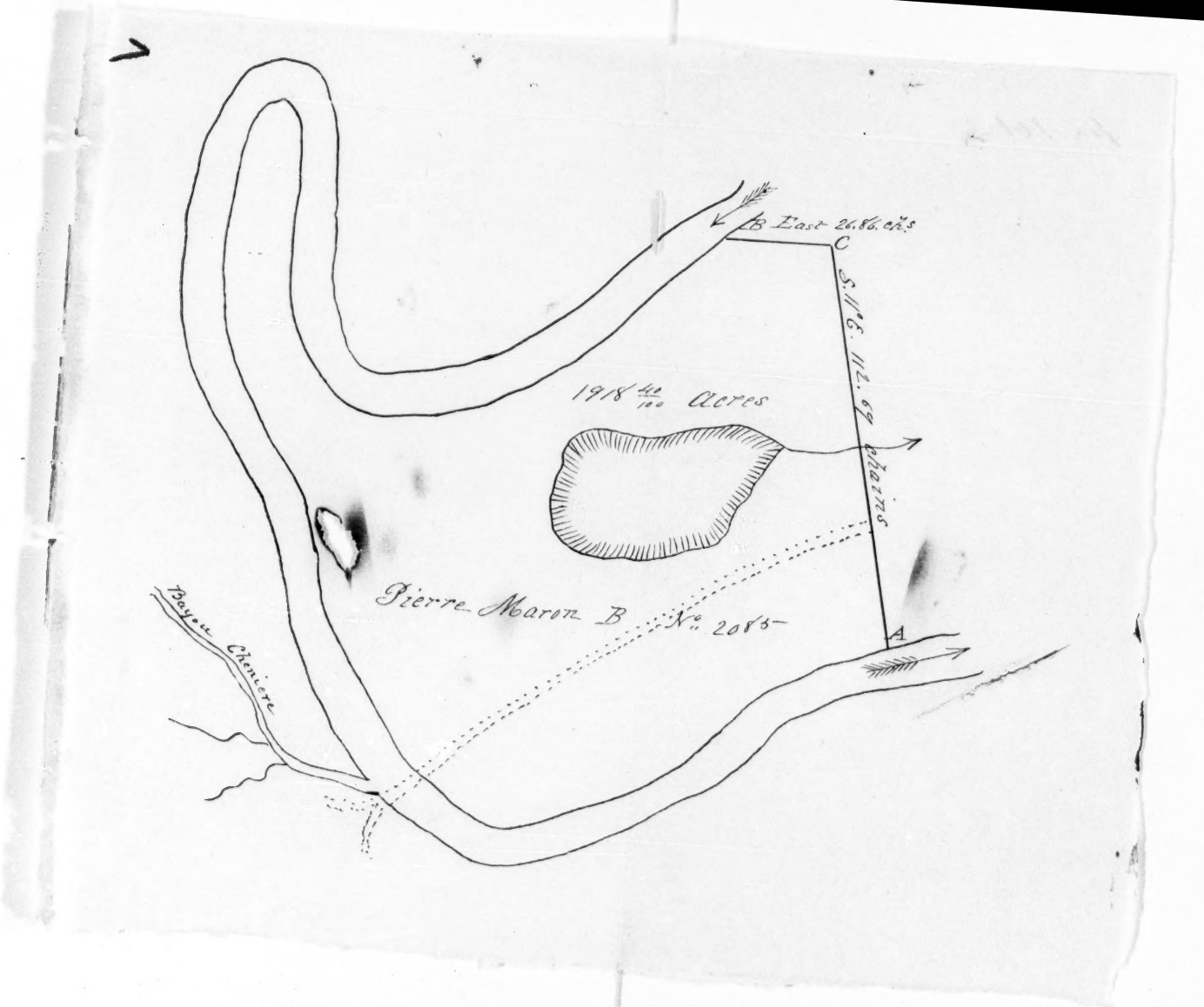
N. 0° 30' West

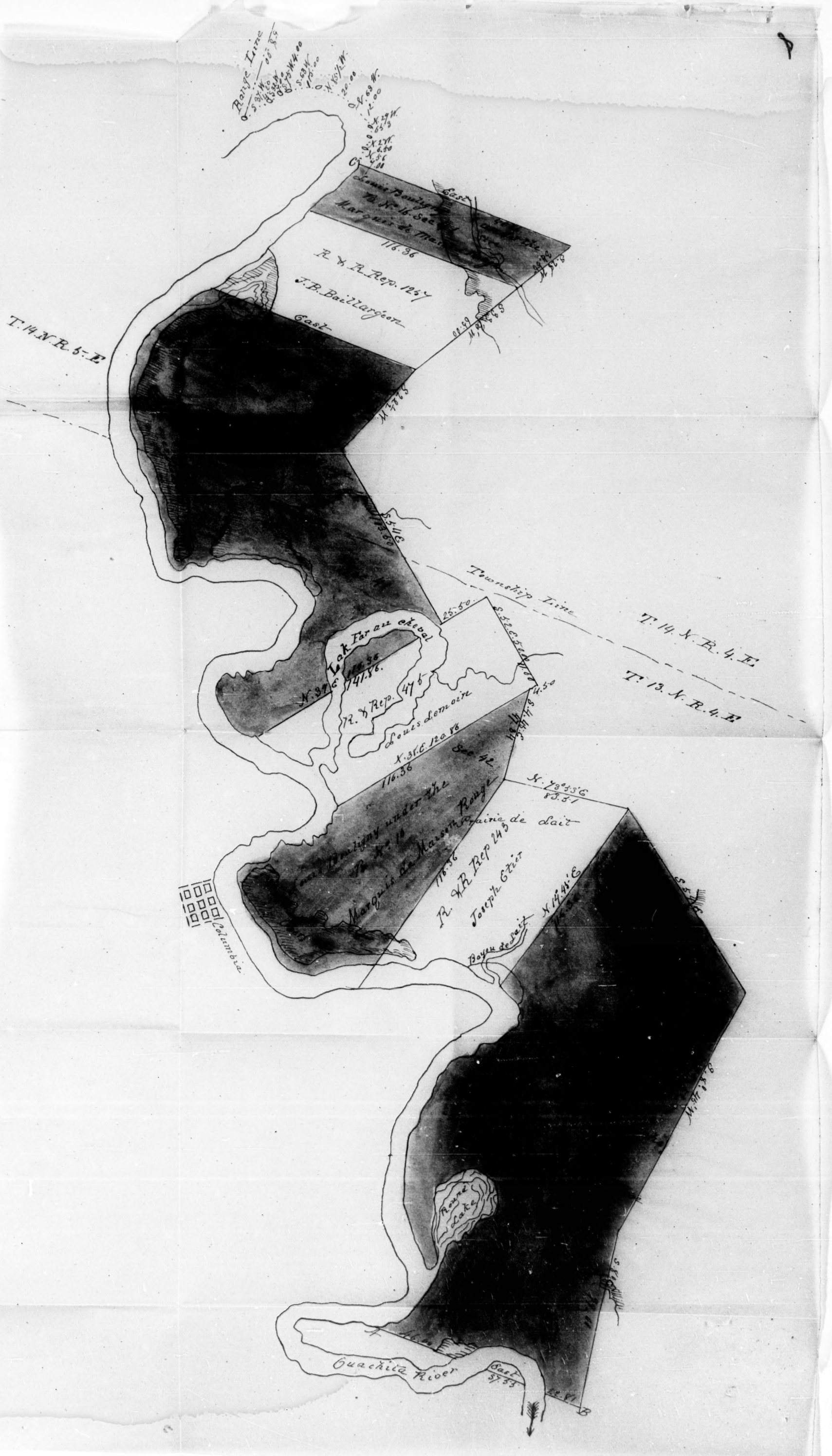
N. 0° 30' West

N. 0° 30' West

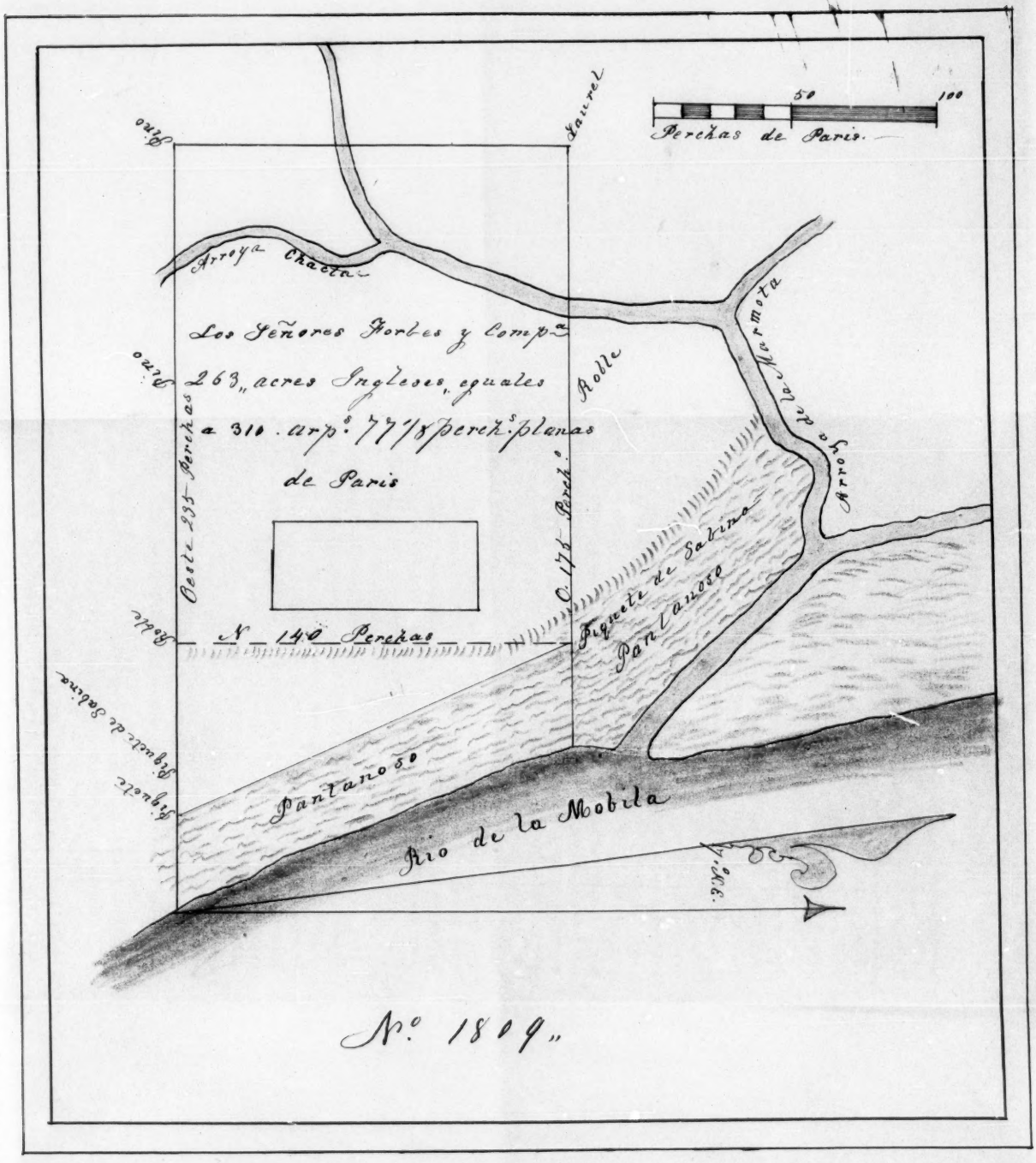
N. 0° 30' West

S. 24° East, true, or S. 33° East, Magnetic Course


B East 26.86 chs
C
S. 11° E. 112.69 chains
1918 40/100 Acres
Pierre Maron B No. 2085
Bayou Chenière
A


Range Line
T. 14 N. R. 5 E.
Louis Boutigny
W. ½ No. 16 Sec. 42
Marquis de Maison Rouge
116.36
R. & R. Rep. 125
J. B. Baillargeon
East
Township Line
T. 14 N. R. 4 E.
T. 13 N. R. 4 E.
Louis Lemoin
Louis Boutigny under the
W. ½ No. 16
Marquis de Maison Rouge
R. & R. Rep. 245
Joseph Gziot
Prairie de Lait
Bayou de Lait
Columbia
Round Lake
Ouachita River
East
57.33

pa: 24-
11



No. 1809„

No 1
Collins & Pintard

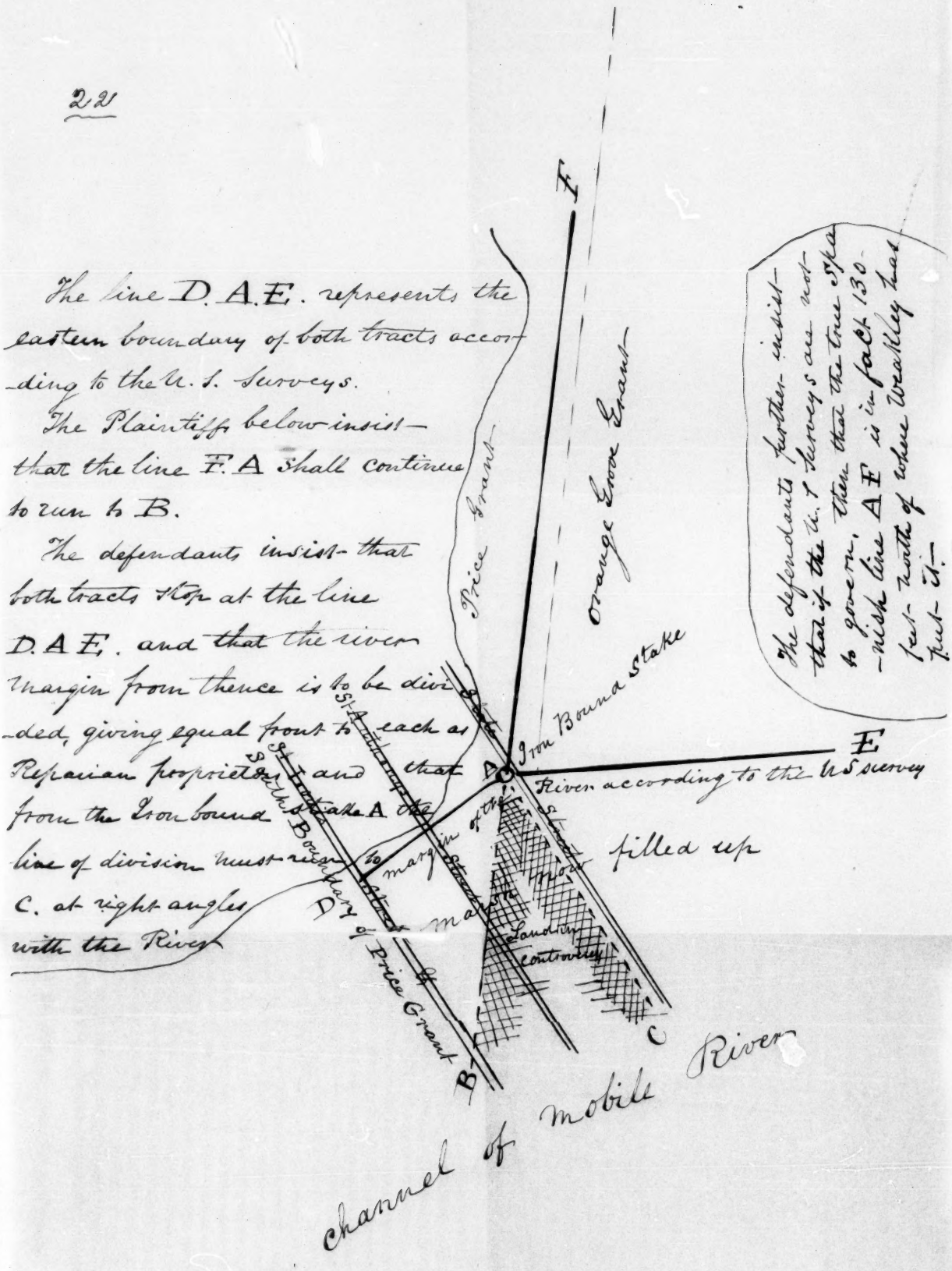
print 11.

22

The line D. A. E. represents the eastern boundary of both tracts according to the U. S. Surveys.

The Plaintiffs below insist— that the line F. A shall continue to run to B.

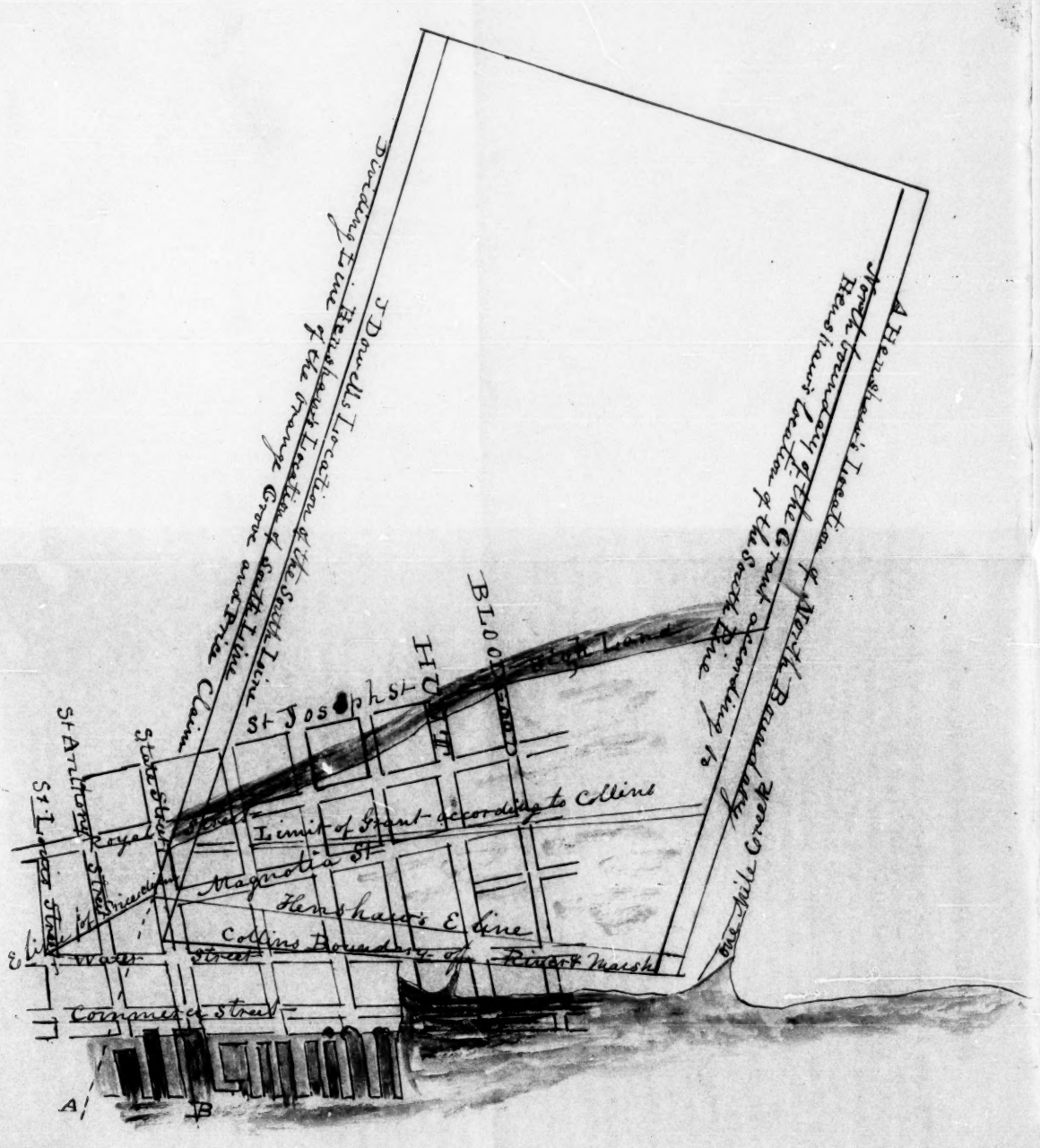
The defendants insist— that both tracts stop at the line D. A E. and that the river margin from thence is to be divided, giving equal front to each as Riparian proprietors and that from the Iron bound line of division must run C. at right angles with the River


F
Price Grant
Orange Grove Grant
The defendants further insist— that if the U. S. Surveys are not to govern, then that the true stake —wish line A F is in fact 130 feet North of where Weakley has put it.
from Bouna stake
E
A
River according to the U.S survey
St A
South Boundary of Price Grant
margin of the
filled up
Mobile
Landing contended
D
B
C
Channel of Mobile River

Trough map

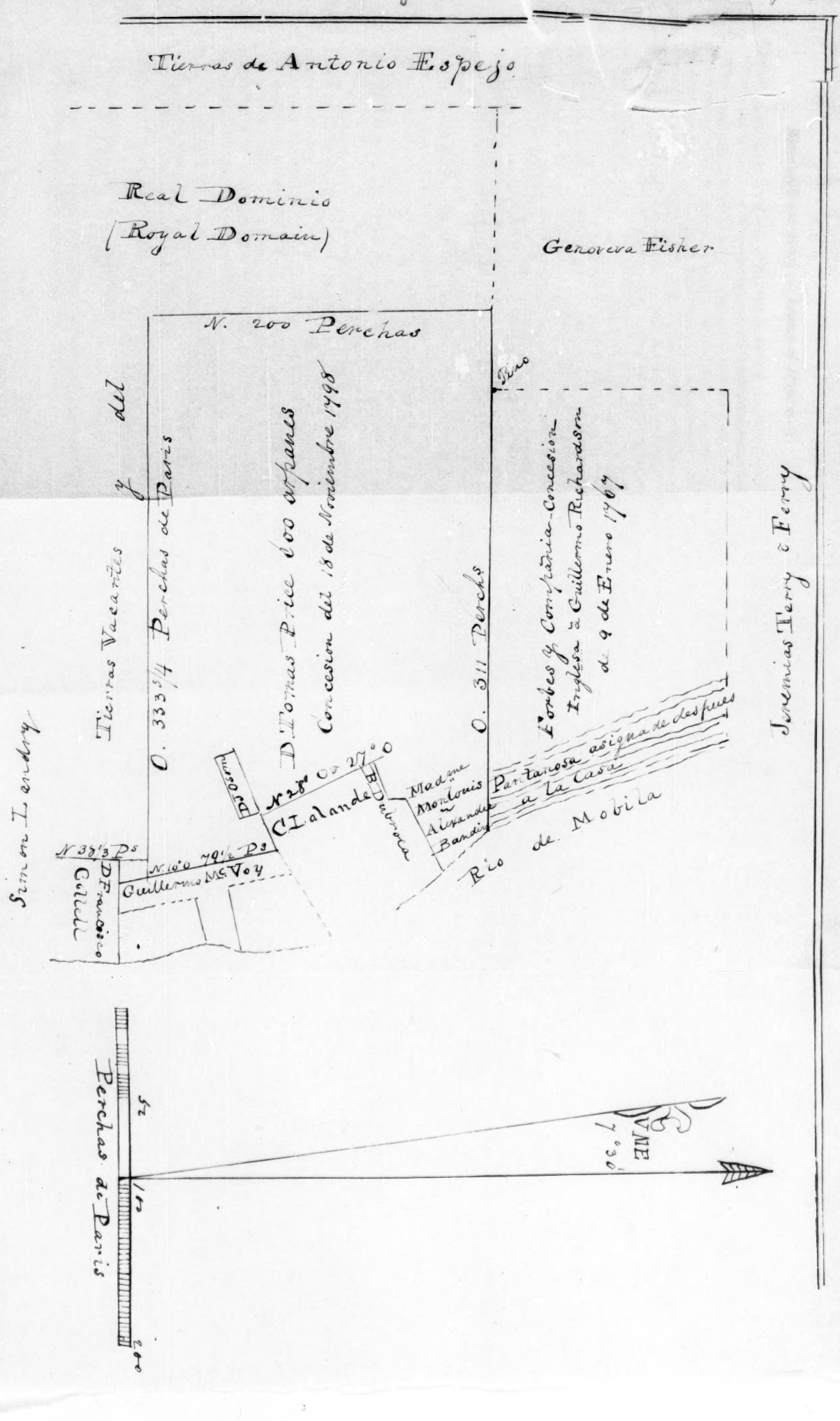
45 print 20-

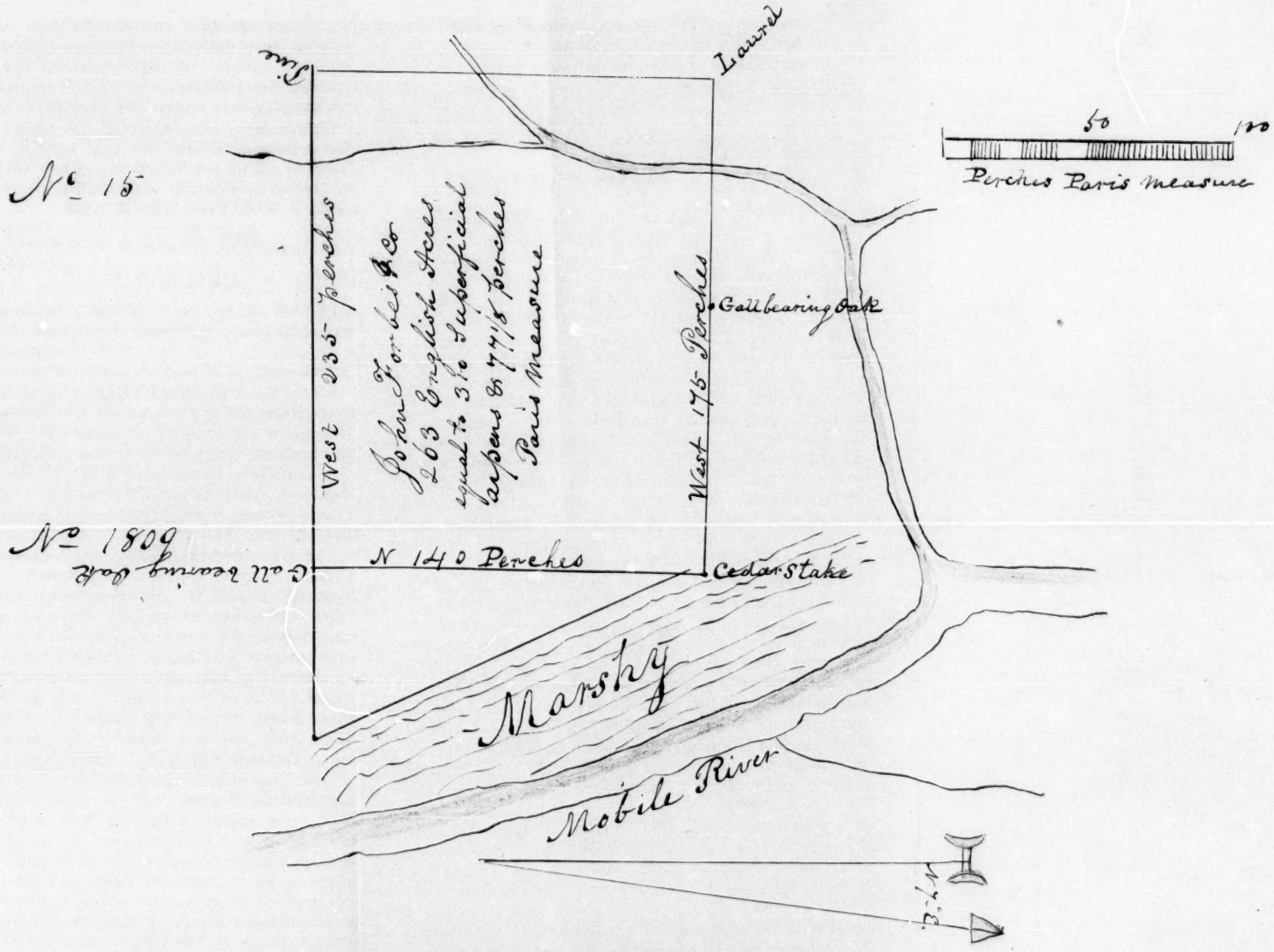
11


Claim
Surveying Line of the Southern Limit of the Grant of the South Line
J. Douglas Location of the Southern Limit of the Grant of the South Line
Heirs Assigns Lessees & North & Boundary
Metes Bounds & Courses of the Grant of the South Line
St Joseph St
Block
Limit of Grant according to Collins
Magnolia St
Hawkshaw's Line
Collins Boundary of Fort
River Marsh
Mill Creek
St Augustine Road
State Street
Royal Street
St Lawrence Street
Water Street
Commerce Street
A
B

Troots map

47 Mun 20 Orange Co. Surveyed in Dec 1811




No 15
Pine
Laurel
50
100
Perches Paris measure
West 135 Perches
Contains Four hundred & Eighty Acres
equal to 306 Superficial
Arpens & 77/8 Perches
Paris Measure
West 175 Perches
Gall bearing Oak
No 1809
Gall bearing Oak
N 140 Perches
Cedar Stake
Marshy
Mobile River

Fl T IV. R. I W. Land District South n part of Alabama

Mobile River

Bayou Chactaw

Heirs of John Murrell Cert No 54 Acres 170 25/100

Heirs of Wm E Kennedy not confirmed Cert No 17

Heirs of Antonio Estopio Cert No 11 Acres 640 31/100

John Forbes & Co Cert No 1 Acres 267.41/100

William Fisher Cert No 2 Acres 203.42

Joshua Kennedy present claimant Thomas Price original claimant

Simon Favre Cert No 74 Acres 335.57

Rizista Bernoudy Acres 504.76

John Forbes & Co Cert No 11 Acres 504.76

John Forbes & Co Cert No 12 Acres 177.02

The Sectional lines surveyed by C. C. Stone in 1820
The Private claims by James Dowall in 1831, and resurveyed by Andrew Henshaw & John James in December 1834 & January 1835.

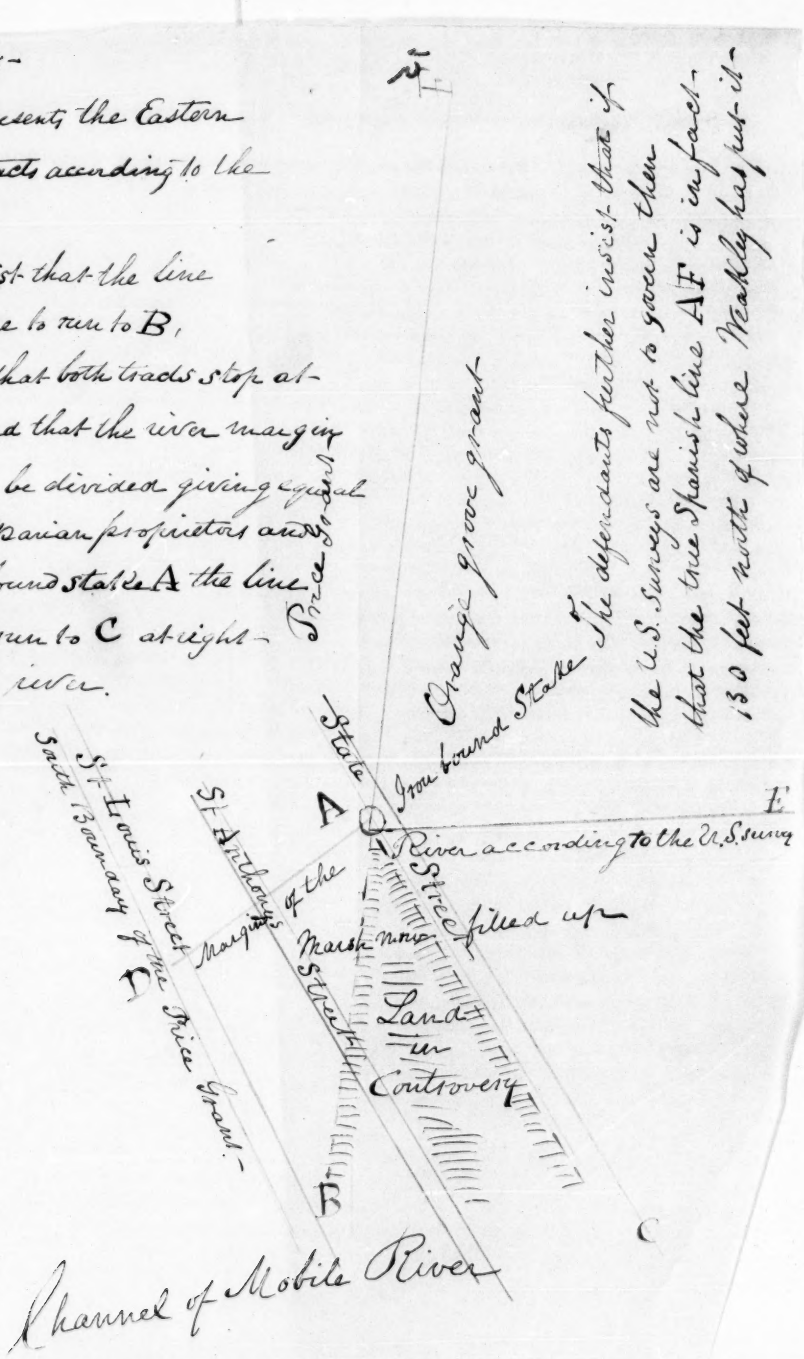
Surveyors Office Florence Ala
Oct 12th 1836.

I certify that this plat of Tow. No 4 Range No 1 West is a true copy from the Original on file in this Office. Jas H. Markley Surveyor
U. S. Lands in Ala

124 c print 55-

The line DAE represents the Eastern Boundary of both tracts according to the U.S. Surveys.

The plff below insist that the line A shall continue to run to B, the defts insist that both tracts stop at the line DAE, and that the river margin from thence is to be divided giving equal front to each as Riparian proprietors and that from the iron-bound stake A the line of division must run to C at right angles with the river.


Orange grove grant
Iron bound Stake
The defendants further insist that if the U.S. Surveys are not to govern them that the true Spanish line AF is in fact 150 feet north of where Weakly has put it
Iron bound Stake
A
River according to the U.S. Survey
St. Anthony's Street filled up
Marsh mud
Land in Controversy
St. Louis Street
South Boundary of the Price Grant
B
C
Channel of Mobile River

MAP
A.

A true Copy of the
Map
of the
Reservation
Surveyed and Drawn by
Charles L. Schlatter
U.S. Agent
Supert of the
Harbor of Chicago
Office of Public Works
Chicago. Ills
April 19th 1845

CHICAGO RIVER.

SHORE OF 1844.

OPEN ALWAYS STREET.

TIMBER YARD FOR PUBLIC WORKS

GATE

ALLEY

Line of Reservation

BLACKSMITHS SHOP

FOREMAN

STORE HOUSE & CLERK

FORT DEARBORN

CARPENTERS SHOP

PROPOSED STREET

MICHIGAN AVENUE

OFFICES

POWDER MAGE

BLOCKHOUSE

PROPOSED CARRIAGE WAY

ALLEY

ALLEY

KEEPER

LIGHT HOUSE

STREET ALWAYS OPEN

RIVER ST

Fence

Line of Reservation

OPEN RIVER

The lines of arrows denote the several Roads from Michigan Avenue and River Street, to the Lake and Pier, through the Reserve

C.L.S.

17

Addition to Chicago

Fort Dearborn

Chicago River

200 ft

South Pier

217 ft

Pier

284 ft

Street

66

Harbor St

River

Lock St

333 ft

Water

Lake

Michigan Avenue

Wabash Street

State Street

Randolph

Washington

Public Ground
forever to remain vacant
of Buildings

West line of Section 10 Township 39 N. R. 14 East
N. 85° West
1787 feet
27.23 chains

17

200 ft

South Pier East

Pier

Sheet

Michigan Avenue

Public Ground
forever to remain vacant
of Buildings

Harbor St

River

Dock St

Wabash Street

South Water

Lake

State Street

Randolph

Washington

Section 10

Section 15

Section 9

Section 16